

identified correspondence which Fritz von Opel was a party to, and we identified a contract which he negotiated and which two officers of Transdanubia Bauxit, which is a wholly-owned subsidiary of the plaintiff here, entered into with Giulini Brothers.

Fritz von Opel identified the signatures of the Transdanubia officers. Those are the signatures which are on the remainder of the letters. He identified the letterhead of Transdanubia Bauxit on which the documents are written; and I submit where we have produced documents appearing to be documents of a corporation which is wholly owned by the plaintiff, which bear the signature—and on some of them Fritz von Opel definitely identified the signature of officers of Transdanubia—they should be admitted unless there is some counterindication that they are not authentic.

The Court: I do not think you gave me quite all of them. Let me get your numbers correct now. Is it 99?

Mr. Gallagher: Your Honor—

The Court: Follow them with me. I want to know what you are talking about. Is it number 99?

Mr. Gallagher: 98, Mr. Ingoldshy says, also. I 2351 thought it started at 99.

It is 99-A.

The Court: I have 99 only. Have you got a 99-A?

Mr. Gallagher: Mr. Burling said 99-A at the time. It was admitted in evidence as 99. It is 99, 100, 101, 102, 103, and 104, and the A's of them.

The Court: I do not have any A's.

Mr. Gallagher: They are the German. These are the translations.

The Court: That is important. I cannot tell whether they have the signatures or not.

Mr. Gallagher: The A's are German.

The Court: These are copies. I would have to see all the A's.

Frankly, I will have to get the facts and the testimony on the identification. There is no question about it.

Mr. Burling: The relevance of my saying I understood that they made a much more limited objection is that if the objection is to the authenticity, I can get a handwriting expert who can examine the signatures of the post-1941 documents and compare them to the documents which Fritz von Opel said he knew about and were, in fact, signatures of the officers of Transdanubia.

Mr. Gallagher: I submit, Your Honor, that still 2352 would have nothing to do with the competency of these documents.

The Court: That would supply the question of authenticity, which you question, don't you see. I did not remember your making any point as to the authenticity of them.

Mr. Gallagher: We could not know at the time whether they might bring a surprise witness.

The Court: I personally do not remember their doing it. The only point you made was that they were beyond a time which was mentioned in the pretrial order, as I recall it.

Mr. Gallagher: That is right. That was my basic objection, but, you see, these are all after Mr. Fritz von Opel, if Your Honor will recollect, advised Transdanubia by wire to lease the mines in May of 1941.

The Court: I am not going to spend a lot of time on the authenticity of it. We are not going to finish tonight, anyhow. I have to meet some Judges in a half hour from out of town, or even earlier, whenever they come. So if there is any question of authenticity, you can straighten that out tomorrow, probably.

Now I will hear you on the relevancy.

Mr. Gallagher: Your Honor, as the record is 2353 reflected—

The Court: Let me find out what we are trying to show. As I understand it, Mr. Burling is trying to show

that Uebersee had control of this Transdanubia Banxit Corporation, and that after war was declared between the United States and Germany and Hungary Uebersee did some business of a corporation in Hungary. Is that right? Isn't that your point?

Mr. Burling: Yes, Your Honor; that Uebersee was doing business through this wholly-owned subsidiary in Hungary.

The Court: After war was declared.

Mr. Burling: Yes, Your Honor.

The Court: Therefore, Uebersee, being the plaintiff, would not be able to claim this.

Mr. Gallagher: We submit to the contrary—that there is not a scintilla of evidence that Uebersee had anything to do with the operations of Transdanubia during the war.

The Court: That is for argument. That is the argument part. I just want to get your position.

Now, then, the point that Mr. Burling is trying to establish is, in particular, that that happened around 1942 and 1943, as these letters indicate.

Mr. Gallagher: We submit, Your Honor, that the fact that a wholly-owned subsidiary, on its own or under 2354 lease arrangement by others, perhaps, as the evidence indicates in this case, were to operate would be completely irrelevant as far as the issues are concerned in this case. Mere stock ownership is not enough; there has to be more shown.

Now, we in our case have shown, through letters from Transdanubia to von Opel in the spring of 1941, and by cables back to Transdanubia, that he completely severed his operation capacity with Transdanubia and threw them to the wolves, in a sense. He put no more money up and told them to go lease them.

The Court: In other words, you say that the fact that this subsidiary of Transdanubia did business or might have done business in Hungary would not affect Uebersee



unless there was some tying in of that activity with an officer of Uebersee?

Mr. Gallagher: Exactly, Your Honor.

The Court: And that that has not been done?

Mr. Gallagher: And I say that has not been done; and, further, those letters, while they are written apparently on the letterhead of Transdanubia, which has the same kind of a letterhead, and they are signed by a couple of Hungarians, could be completely lies, as far as we know. That does not, we submit, at all show that Uebersee itself, either under lease or otherwise, operated the mines.  
2355 We have no way of knowing that and did not know it.

The Court: All right.

Mr. Burling: If Your Honor please, I wish to take sharp issue with Mr. Gallagher about the lease. We contend the evidence establishes just the opposite; that Fritz von Opel recommended that the mines be leased, but that they were not, because those letters show that Transdanubia continued producing bauxite and sending it to Germany all during the war.

Now, our position is that we show that Fritz von Opel went to Budapest; that he negotiated a contract for the shipment of bauxite from Transdanubia to Germany, which was to continue up until 1942, through 1942. We show that when he left Europe for the last time in April, he wrote to Giulini, a German aluminum manufacturer—

Mr. Gallagher: 1940.

Mr. Burling: Excuse me. I am sorry.

Mr. Gallagher: April, 1940.

Mr. Burling: He left April, 1940. He referred to the contract and said, "I trust our business associations will remain pleasant."

The evidence further shows that at all times during the war there was an investment of over a hundred thousand Swiss francs in Transdanubia by Uebersee.



2356 The record further shows that a bank loan was extended by Uebersee ultimately to Transdanubia, and that actions were taken by Uebersee officials in 1942 with respect to the extension of that bank loan.

We have further shown, and Fritz von Opel has testified, that the letters which we are now discussing came from the files of Giuliani.

We have shown at least a very strong prima facie case that those documents are in fact genuine. They do go to show that the Transdanubia was doing business, that is, producing bauxite, in Hungary.

Then, I say we get a question of law as to whether that much of a showing on the Government's part, and no showing of a cessation of business relationships between Uebersee and Transdanubia, constitutes doing business for the purposes of the Trading with the Enemy Act.

The Court: In other words, you say that if a corporation owned a subsidiary and that subsidiary does business with an enemy, and even if that should be without knowledge of the principal corporation, which is the plaintiff in this case, that would bar its recovering?

Mr. Burling: I said that would be a position which I might occupy if I had to.

The Court: On the question of that weight, I believe I will let that go to the end; I mean until the whole  
2357 case is argued. There is no reason why I should not consider that in connection with the whole case.

Of course, the authenticity is one thing. Let me see if I get your position clearly, Mr. Burling. Of course, I know about the other transactions. He is not asking to strike those out. He is simply asking to strike these exhibits out, these letters—

Mr. Burling: Yes, Your Honor.

The Court: And I understand you to say that these letters show that after the United States came to war with Hungary and Germany this Transdanubia, which was wholly owned by the plaintiff corporation, did busi-

ness over there, and that that is binding on the plaintiff corporation, or at least you have a right to contend that, regardless of whether the plaintiff corporation knew about it or not?

Mr. Burling: I contend that also Your Honor should find that the plaintiff corporation did know about it, because the plaintiff corporation was active, prior to 1940, in producing bauxite in Hungary, and there is no adequate showing here that they stopped.

To be sure, Dr. Meier has testified that he personally gave no orders, but yet we do not know who voted the stock, and we do know that after war was declared between Hungary and the United States the plaintiff corporation continued a bank loan, which I contend is doing business, as I contend that corporation A wholly owns subsidiary corporation B—

Mr. Gallagher: To clarify it, you mean a collateral for the loan?

Mr. Burling: No. I contend that the evidence shows that officers of corporation A—that is, Uebersee—took active steps to continue in existence a bank loan for corporation B after the war, and that that constitutes doing business; and then I want to show through these letters, that Transdanubia was doing business in Hungary because it was producing bauxite and shipping that to Germany for refining.

I say that there was a complete absence of showing that there was a severance between Transdanubia and Uebersee; that there is a burden—a major burden—on the plaintiffs to show that, since we have shown that Fritz von Opel very actively was producing bauxite after the European war had started, and that he entered into a contract—that he negotiated a contract—which was to run up through 1942, and that this bank loan was continued through 1942.

In the face of that evidence, I think there is a presumption that the relationship continued; and my friends have

done nothing other than take the testimony of Dr. 2359 Meier—whatever weight that might be given—to rebut that presumption.

Transdanubia just disappears into a cloud in this record.

Now, of course, one thing that you can say very definitely is that the evidence establishes clearly that the mine was not leased in response to von Opel's recommendation, because these letters show that, on the contrary, Transdanubia went ahead and produced bauxite all during the war.

I think the letters are relevant and competent to show that Transdanubia was producing bauxite and that Transdanubia was doing business with Uebersee, and therefore Uebersee was doing business in an enemy country, and hence barred under the Trading with the Enemy Act.

Mr. Gallagher; I would merely like to point out a few examples. I do not want to make this our argument. This will all be a portion of our closing argument, Your Honor, but I merely want to point out that, in our opinion, if corporation A wholly owns corporation B, if there is no showing that corporation A gives directions as to the operation of corporation B during a war year, the fact that it is a 100 per cent investment is meaningless.

Mr. Burling makes quite a point of the fact that 2360 subsequent to the beginning of the war with England in 1939, these mines produced ore. Mr. von Opel's attitude is reflected when he says that 2,000 tons of ore came out of that mine, and the reason he dropped out of it was because he lost money. But General Motors, which bought the very plant which started the whole problem, namely, Opel Works, was being operated by Americans in Germany up until the time of Pearl Harbor, when the war was on between Germany and England; and their own deposition, which they are going to submit, of Mr. Mooney, will show that he was in Germany running the Opel Works when England was at war with Germany.



Mr. Burling: I submit, before we get to that, which I think is incorrect, we had better read the Mooney deposition. I do not think it is correct.

Mr. Gallagher: I am merely pointing it out at this time because it is relevant to your argument. As far as the loan is concerned, I merely want to reclarify that at the moment—

The Court: The loan is not the point. That is for later argument. The only thing I am concerned about is whether these letters would have any pertinency or establish any claim of plaintiff corporation's having done business with an enemy.

Mr. Gallagher: We submit that, even without the 2361 cables from von Opel to Transdanubia, telling them,

"No more money; go lease the mines," without a showing that Uebersee or one of its officers operated the Transdanubia mines, the fact that we own 75 100 per cent—the shares—is meaningless, because it is certainly apparent that the Hungarian Government would certainly take it over and mine the ore during the war, whether you had your own employees in or not.

The Court: I think I can dispose of this at the proper time.

Do you want leave to prove that the handwriting on these documents is the same as those on admitted documents?

Mr. Burling: Yes, Your Honor. I want that unless my friend will concede it.

The Court: I asked him if he wanted the opportunity to compare the handwritings on these exhibits with those that are already in evidence properly identified as authentic documents of Transdanubia.

Mr. Gallagher: If he feels it is going to show anything, I suggest that he do it; but, as far as we are concerned, we still feel that they do not carry any burden.

The Court: I will give him an opportunity to do it. I am not going to hold the case up for it. You can do that

overnight. He has a deposition to read tomorrow.  
 2362 I am very much inclined to rule on this whole matter as part of the disposition of the case. As you gentlemen know, we are not in a position, in these evidence propositions, to take the time during the trial to rule on the inadmissibility, unless they are plainly inadmissible. Now, then, in my judgment they are not plainly inadmissible. I have some trouble with the point. I will be frank with you. I do not know how much the action of a wholly owned subsidiary would be binding on another corporation, unless you specifically do it; but I will give you a chance to argue that at the conclusion of the case. It comes within the part of the Trading with the Enemy Act that relates to—What is that language?

Mr. Gallagher: Doing business.

The Court: Doing business with an enemy.

Mr. Gallagher: It is Section 2.

The Court: I think I will dispose of it that way.

I will permit Mr. Burling tomorrow, if he wants to, to properly authenticate them. I think under the law he has a right to tie in the signatures with admitted signatures that have already been produced in evidence of these parties. If he wants to do that, I will give him a chance to do that tomorrow morning; and then, unless I change my mind overnight, which I do not think I will, I will  
 2363 leave the matter of the handling of it for final argument. I frankly do not know the answer. I will let you submit that at the complete disposition.

You could make that as one of your proposed findings of fact and conclusions of law, and Mr. Burling can ask me to find—you can dispose of it that way—as a matter of fact that Mr. von Opel in 1940 gave certain instructions, and that beginning in 1941, after the war, there was nothing given to stop them, but, on the contrary, that there were certain loans made, and so forth, and that Transdanubia, under these letters, carried on operations.

You can make that as a finding of fact, and then, on that, you conclude as a matter of law that that was doing business with an enemy within the meaning of the Act.

—You can take the position, on the contrary, that it was not incumbent upon them, but this was a separate entity, and Mr. von Opel did not have to give countermanding orders to stop it, and you can make a finding of fact based on what Dr. Meier said, that nothing was done, and so forth, and that that is not doing business. I think you can enlarge it.

I think that is really the better way to do that on this, because it probably is a material matter in this 2364 case, which ought to be passed on in the admitting and striking of evidence.

On the authenticity of it, I think I would have to rule it out without authentication.

I think you can do that tomorrow.

How long will it take to read the deposition?

Mr. Gallagher: I have a couple of more motions to make.

I would also like to renew my objection to Defendant's Exhibit 30, which the Court permitted, at page 295 of the record, the Government to identify and then permitted them to introduce it in the record.

That was a letter that was written by John Thomas Smith of General Motors to Mr. Wronker-Flatow, who, under inquiry by Mr. Burling, said he had a faint recollection of it. But we submit that is surely hearsay. John Thomas Smith is not here, and we wish to renew our objection and move that the letter be withdrawn. That letter would call for considerable controverting—

The Court: Tell me the circumstances of this. I have forgotten.

Mr. Gallagher: Well, at page 295 of the record he had Mr. Wronker-Flatow—Mr. Stansfield—on the stand—

The Court: That is Mr. Wronker-Flatow?



Mr. Gallagher: That is right, and Mr. Burling 2365 started asking him, on page 295:

"Question: I show you now a letter dated June 2, 1932, a copy of such a letter, which was addressed by the general counsel to Dr. Manfred Wronker-Flatow; and I would like to ask you to look at it, to read it, and see whether it refreshes your recollection, whether you received this letter."

He says:

"That was in '32. I remember some, now that I read this letter, that I got some information from John Thomas Smith on the things; but they were transactions where I was not involved," and so forth.

"Question: But you recall having received this letter?

"Answer: I have a faint recollection that I did receive such a letter. You see, there were many things happened; I don't recall all of them.

"Mr. Burling: I will ask to have this letter marked as Defendant's Exhibit 30. The original is in English"—

Mr. Burling: You omitted a sentence in reading it. You omitted a sentence:

"It is telling the whole story."

Mr. Gallagher: "It is telling the whole story."

That is right; that should be in there.

2366 We had objected, prior to the showing of the letter, at page 295, and I stated, at the conclusion of that statement, that there was no further need to restate our objection.

The Court: Is that all there is on it?

Mr. Gallagher: Yes, Your Honor.

Mr. Burling: No. If Your Honor please, at the top of page 297, the record reads as follows:

"The letter was accordingly marked and received in evidence as Defendant's Exhibit No. 30."

It went into evidence.

The Court: Well, I guess he can move to strike it even if it is in.

What do you say about that, Mr. Burling? His objection is that it is hearsay, a statement on the part of Smith.

Mr. Burling: Actually I was reading a deposition. I will ask Mr. Baum to argue it.

Mr. Baum: Your Honor, the letter and the deposition were read, and what Mr. Gallagher was reading was the deposition before Mr. Stansfield appeared in person, pursuant to your request, and in that deposition he was asked whether or not there had not been a proposal by the von Opels to reacquire the stock, and he said, when we got to this letter, that he remembered such a proposal,

2367 which is what is stated in this letter, by John Thomas Smith, and he remembered some wild schemes of fictitious proposals, and then he demurred at using "fictitious."

If I may have a moment, Your Honor, I will find that.

Mr. Gallagher: But the only thing that is in evidence out of that deposition is what is read in, Mr. Baum. I do not think anything further should be read into the record out of that at this time.

2368 The Court: I have got to get this straight. Is this the witness Stansfield testifying?

Mr. Gallagher: No; this is Stansfield at the time of the deposition.

The Court: That is right; I had not finished yet: Stansfield by deposition before he came here to the stand?

Mr. Gallagher: That is correct.

The Court: On direct by you, he was asked— What question was it?

Mr. Gallagher: This is their witness; they were interrogating him at that time. It was direct because they had brought him here, although we brought him here by offering him, as you recollect. When they came to that portion of the deposition where they were going to put in this

letter from John Thomas Smith, I objected. I advised the Court:

"If Your Honor wants to read it, we have no objection to Your Honor's reading it."

But on the basis—

The Court: That is purely hearsay.

Mr. Baum: No, Your Honor, because it is my recollection that part of the deposition that is read into this record, Mr. Gallagher to the contrary notwithstanding, identified—in other words, the witness said he remembered facts which were stated in that letter. It is a letter addressed to the witness. He remembered having received it.

The Court: You should have asked him to testify to the facts from his own recollection. I do not know how Stansfield could adopt facts that this man told him in a letter except on hearsay, unless he was present when it occurred.

Mr. Baum: Well, he was present throughout, as you recall, Your Honor. He was counsel for Adam Opel, A. G.

The Court: He got this in Germany, and this was written from New York, wasn't it?

Mr. Baum: That is correct. By the way, the attorneys for the plaintiff have admitted that this is a letter written in the regular course of business.

The Court: Well, he could have had letters written in the regular course of business, and they would be hearsay.

The point counsel is trying to make is that Mr. Smith makes certain statements in this letter as to which he had no right to cross-examine or no privilege of cross-examining him on and of not having the judge see his manner of answering. That is always subject to the objection of hearsay.

Mr. Baum: Mr. Smith has been dead for about a year and a half.

The Court: That does not admit his letters.

Mr. Baum: But the testimony of the witness, when he



was shown the letters was, "Yes, I remember these. Mr. Connor, who is Mr. Gallagher's partner, had plenty of opportunity—

Mr. Gallagher: I just read where he said:

2370 "I have a faint recollection that I did receive such a letter."

He said, "I remember I got information from John Thomas Smith, but the transactions were forward and backward."

The Court: I will let you pick out the part of the deposition which you say shows that Mr. Stansfield was testifying to facts in here. Even then, I do not see how I could let this stay in, because he had probably refreshed his recollection from a lot of documents not properly used in this case. I do not want to get in any error on an important point like this. I will give you a chance to argue that in the morning.

Mr. Gallagher: I would like to say, by way of going back, that you stated our position with respect to Transdanubia. We have had no right of cross-examination of either of those men whose letters they want to try to put in now, as to whether or not we did business with them or what the situation is. That is just exactly what we have been deprived of.

The Court: What letters do you mean?

Mr. Gallagher: The letters we are talking about, 99 to 104.

Mr. Burling: Those letters were written by officers of a wholly-owned subsidiary.

The Court: What he wants to show is that they were taken from the files of the regular corporation.

2371 Mr. Gallagher: No, they are not taken from the files of our corporation, if there has been any misunderstanding on that. They are taken from files of a German in Germany by the name of Giuliani. These are not taken from Transdanubia's files. No, sir. I am sorry

if I have not made this clear. These are out of a German witness' file in Germany.

The Court: I will hear you on that tomorrow morning. What is your third point? Maybe you had better bring that up. That does involve a point I had not thought of.

Mr. Gallagher: Then, the third point is something I merely want to clarify for the record. Defendant's Exhibits 55 and 56, which were the General Motors' interoffice fourth degree hearsay memorandum, Your Honor subsequently sustained objection to, and they withdrew them. At that time you made a statement that that portion of the testimony that might not have pertained to the objection could still stand. I should now like to renew that objection and move to strike now the testimony on pages 996 through 1009, which pertain to those General Motors exhibits which are now out of evidence.

The Court: I won't consider any testimony that relates to them.

Mr. Gallagher: That is what had me a little confused. In reading over the transcript and going back, there was a little language that had me perturbed as to whether something would be standing in that area.

2372 The Court: What I probably said, or what I meant to say, was that if he had any personal knowledge of the transaction, I would permit it, but the interoffice memorandum itself I did not believe was permissible.

Mr. Gallagher: That is all, Your Honor.

The Court: I will give you a chance to look that up tomorrow. Then you can prove your handwritings and can argue the proposition more in detail. I had thought I would put it off to the end, but I think I can dispose of it tomorrow.

There is no reason why we cannot close this whole case tomorrow, is there?

Mr. Gallagher: I certainly see none. I have a few questions to ask Mr. von Opel and two questions of Dr. Kronstein.

Mr. Burling: We shall have 20 minutes on a deposition plus a handwriting expert.

The Court: Maybe you gentlemen can work out that authenticity yourselves. If you cannot, I will hear it.

We will adjourn until 10 o'clock tomorrow morning.

(At 3:35 p.m. an adjournment was taken until Tuesday, January 11, 1949, at 10 a.m.)

2376

## PROCEEDINGS

Mr. Gallagher: If Your Honor please, if I may say so, we overlooked yesterday, in our objection and our motion to strike, also, including Defendant's Exhibits 90 and 98. There was a little confusion in the record.

The Court: Let me have the numbers, now.

Mr. Gallagher: Nos. 90, 98, and 99 through 104. As to those our objection is renewed, and also a motion to strike.

For clarification, I should like to state to the Court, in view of Your Honor's statement yesterday, and to make clear any confusion, that these documents were never shown to us before trial. There was no stipulation covering these. They are not out of the files of either Uebersee or Transdanubia, to our knowledge. They are out of the files of Giuliani, and not shown to have been kept in the regular course of business.

Mr. Frick, of Giuliani Brothers, whose name was mentioned by Mr. Burling, is, to our knowledge, alive, and, to the best of our knowledge, was not brought.

Mr. Burling: I believe 97 and 98 and 90-A fall into different categories.

There is no question there whatsoever as to the genuineness of the documents, because the genuineness of the signature of the officer of Transdanubia was flatly and un-



equivocally admitted by Fritz von Opel. As to 98, 2377 it was an aid memoir or a memorandum prepared by somebody in Giulini regarding what apparently was a conference that took place between them and some people in Transdanubia.

The Court: I am going to rule on that as soon as I get the testimony in. Do you have some experts?

Mr. Burling: No, Your Honor, we do not. We were told by a handwriting expert that some of these signatures—there being two of each man—are inadequate, so that the expert could not testify unqualifiedly.

The Court: Suppose you read your deposition while Mr. Yates is assembling these. Then we will come right back to this.

#### DEPOSITION OF JAMES D. MOONEY

Mr. Baum: This is the deposition of James D. Mooney, taken in Toledo, Ohio.

May I ask, Your Honor: Is it agreed by counsel that we need not read the opening paragraph?

Mr. Gallagher: That is O. K.

(The deposition of the witness James D. Mooney was then read. Mr. Baum read the questions on direct examination, and Mr. Goldstein read the answers.)

"JAMES D. MOONEY, of lawful age, being by me first duly sworn as hereinafter certified, deposes and says as follows:

#### *Direct Examination*

By Mr. Harris:

2378 "Q. Mr. Mooney, will you state your full name for the record? A. James D. Mooney.

"Q. Where is your residence? A. 2104 Parkwood Avenue, Toledo, Ohio.

"Q. What is your present occupation? A. I am Chairman of the Board and President of Willys Overland Motors, Incorporated, Toledo, Ohio.

"Q. For how long have you held that position? A. Since January, 1946.

"Q. Were you ever employed by the General Motors Corporation? A. Yes, sir.

"Q. During what period? A. From 1919 to 1941, and then later from 1945 to 1946.

"Q. In what capacities were you employed by General Motors? Could you give us the various capacities chronologically by dates? A. Yes, sir.

"Q. What I would like to get is simply a description of the positions you held and the dates? A. I guess that is it (refers to paper).

"Mr. Harris: Suppose you take down the following, in answer to this question: Mr. Mooney stated that 2379 he had recently prepared a summary of his experience, for the Willys Overland Publicity Department. It was stipulated by Mr. Gallagher and Mr. Harris that this summary prepared by Mr. Mooney might be copied into the record, in answer to the question.

"Mr. Gallagher: That is all right."

Mr. Baum: On page 3:

"Thereupon, a copy was made for the reporter, and is herein incorporated into the record as follows:

"James D. Mooney was graduated from the Case Institute of Technology, Cleveland, Ohio, 1908, with a Bachelor of Science degree in Mining and Metallurgy. Later he received post-graduate degrees in Mechanical Engineering and Doctor of Engineering from Case and a

Bachelor of Science degree in Commerce from New York University.

"Mr. Mooney, during World War I, served overseas as a Captain in the 309th Ammunition Regiment, 159th Field Artillery.

"After World War I, Mr. Mooney became a special assistant to Alfred P. Sloan who then, in 1919, was a Vice-President of General Motors, in charge of the Accessories Divisions.

"In 1920, Mr. Mooney was made President and General Manager of the Remy Electric Company, a General Motors subsidiary, manufacturing electrical equipment, starting motors, generators and ignition for cars and trucks.

"In December, 1921, he was made General Manager of the General Motors Export Company.

"In 1922, he was elected to the General Motors Board of Directors, and during the following years served on the Corporation's Operation Committee, Executive Committee and Engineering Committee.

"He became successively President of the General Motors Export Company, President of the General Motors Overseas Corporation and Group Executive in charge of the Corporation's Overseas Operations.

"From 1923 to 1939, he installed, constructed and organized the Corporation's worldwide scheme of overseas manufacturing and assembly plants and warehouses.

"In 1940, Mr. Mooney was relieved of his responsibilities for the General Motors Overseas Operations, and was made Chairman of a small group of Directors given special sanction by the Board to plan and execute quickly the conversion of the Corporation's manufacturing facilities from the production of cars and trucks to the production of planes, engines, tanks, guns and ammunition for the Army and Navy.

"He became a member of the Naval Reserve in 1937, and



was called into active service a month before Pearl Harbor. He was made head of the Production Engineering Section of the Bureau of Aeronautics with the rank of Lieutenant Commander. He later was transferred to the Advance Base Division, and was promoted to the rank of Captain while on duty in England as a member of the staff planning the Normandy invasion.

"In 1944-45 he served on the staff of the Chief of Naval Operations as part of the planning group charged with making recommendations for improving naval operations in the Pacific.

"In 1945, upon release from active service with the Navy, Mr. Mooney returned to General Motors and resumed his duties as Group Executive in charge of the Overseas Operations, a member of the Board of Directors and Administration Committee.

"Mr. Mooney resigned from General Motors in January, 1946, to join Willys-Overland Motors, as Chairman of the Board, President, Chairman of the Executive Committee and a member of the Finance Committee."

"Q. I call it to your attention, Mr. Mooney, that this memorandum of your experience which you prepared states that from 1923 to 1939, you were with the General Motors Export Company. In what capacity were you serving with General Motors Export Corporation in 1931 and 1932?

A. Well, I was the responsible operating executive for anything in the General Motors Corporation that was outside of the United States and Canada.

"Q. That includes Germany? A. Oh, yes.

"Q. Where was your office? A. New York.

"Q. Did you sometimes travel through Germany during that period on the business of General Motors Export?

A. Yes, sir."

Mr. Baum: I skip, now, to the first question on page 6:

"Q. Did you know in your capacity as President of General Motors Export Corporation who owned the stock of Adam Opel A. G. in the year 1930 and the first part of 1931? A. At that time I knew who owned it. It was part of my responsibility to know who owned it.

"Q. Who did own Adam Opel A. G. at that time? A. That is where you get into this memory thing. At that time I knew who owned it; but I would have to depend on my memory now for 1931 and 1932, and that is where I have to saw off because I could not say positively now out of my memory. Therefore might I sum up the answer: at the time I had a very definite responsibility for knowing who owned the stock of all these companies; that was my peculiar responsibility, and I knew at that time.

2383 "Q. But you no longer recall with certainty the details of the stock ownership of Adam Opel A. G. in 1930? A. That is right.

"Q. For the purpose of refreshing your recollection, I show you now a photostat of a letter dated April 11, 1929, from Wilhelm von Opel to the National City Bank, of New York. This photostat has been marked Defendant's Exhibit A. The typed words 'Exhibit A' at the top are not part of the original letter. Will you please read that? "(Witness does.)

"Q. Does this refresh your recollection as to the ownership of certain of the shares of stock of Adam Opel A. G. during the year 1930? \* \* \*

"Q. Will you go ahead and answer the question, Mr. Mooney? A. What is the question?"

Mr. Baum: The question was read to the witness.

"A. No, it does not.

"Q. I call it to your attention that this letter from Wilhelm von Opel to the National City Bank appears to constitute part of an agreement whereby he deposited 600

shares of Adam Opel, A. G. with the Bank, subject  
 2384 to certain rights of purchase by General Motors, or  
 subject to certain rights on the part of Mr. von Opel  
 to require General Motors to purchase. Does that refresh  
 your recollection? . . .

"Q. You are to go ahead and answer the question, Mr.  
 Mooney. A. Yes, sir.

"Q. Do you now recall that this was part of an arrange-  
 ment between Wilhelm von Opel and General Motors where-  
 by these 600 shares of stock owned by Wilhelm von Opel  
 were deposited with the National City Bank, subject to the  
 arrangements set out in this letter? A. I recall the general  
 theory or the substance of the deal between Opel and Gen-  
 eral Motors because I was in on that; and, naturally, it was  
 left to our General Counsel to handle these technical de-  
 tails.

"Q. Please tell us what you recall about the arrange-  
 ments between General Motors and the Opels. . . . A.  
 I remember that in essence it was considered useful mu-  
 tually between Geheimrat von Opel and the General Motors  
 group for the Opel group to retain some interest in the  
 Opel Company. Part of the story on that was that—

"Q. Suppose you go back to the purchase of the Opel  
 Works by General Motors. Do you mean at the time of that  
 purchase it was considered desirable that the Opels  
 2385 retain some interest? A. Yes, that is the point.

"Q. In what year was that purchase? A. That  
 was in 1929.

"Q. Go ahead. A. We wanted part of the Opel group,  
 particularly Geheimrat himself, to give us a hand in the  
 general administration, and what you might call the very  
 general management of the property; and it was thought  
 advisable from the General Motors standpoint to retain  
 and have retained some Opel interest in the property be-  
 cause, naturally, if they held on to some of the stock in  
 the company, they would have an incentive for working  
 with the American management.



"Q. Was an arrangement therefore made with Geheimrat whereby he continued to hold some of his stock after the sale in 1929 to General Motors? A. Yes, sir.

"Q. Did you learn something during 1931 that Geheimrat Wilhelm von Opel was considering selling out the balance of his stock to General Motors? A. Yes, sir.

"Q. Do you recall how you learned that? A. In discussions with Geheimrat, he told me that he was considering it, and I made a plea to him to retain his interest. 2386 We had a very frank discussion about the thing between the two of us. He wanted me to tell him whether I really meant what I said, that I wanted him to go along with the company and be chairman of it, and actually be what you might call the public head man in Germany. I told him very earnestly at the time that I was eager to retain him as chairman and retain his interest in the property."

Mr. Baum: I skip now to the middle of page 10:

"Q. Could you give us as nearly as you can the date of these discussions with Wilhelm von Opel? A. There is where my memory is a bit vague, my recollection of it at the moment. I suppose if I refreshed my memory and took a chronology of my trips and made studious efforts—you know how you stimulate your memory by putting different pieces in—then I could tell you. It was, roughly, out of my vague recollection, two or three years after we got under way, perhaps a couple of years after we sort of got under way with the arrangements, trying to operate the company in harmony with the Opel people, starting with Geheimrat.

"Q. You do recall the date? A. No, I do not.

"Q. For the purpose of refreshing your recollection, I show you now a photostat of a memorandum dated 2387 October 22, 1931, from A. P. Sloan, Jr., to Donaldson Brown—you have seen that?

"Mr. Gallagher: We have seen it.

"Q. Will you please read that, Mr. Mooney?

"(Witness does.)

"Q. Have you read that, Mr. Mooney (Defendant's Exhibit B)? A. Yes, sir.

"Q. Does that memorandum refresh your recollection as to the date of these conversations with Wilhelm von Opel? . . . A. It does not refresh my memory about the dates. It refreshes my memory about the general principle that I was interested in at the time, of keeping Geheimrat interested in going along as chairman of the property.

"Q. Will you tell us what you can recall concerning your negotiations or discussions with Mr. Wilhelm von Opel concerning his retaining his stock for a while longer? . . .

A. My peculiar responsibility in General Motors for the various properties overseas was particularly in the field of getting them managed, which, in turn, meant providing management personnel for the various properties, and this included, of course, the German property, Adam Opel A. G.

Geheimrat von Opel had been concerned for some 2388 years with the management of the property, was intimately concerned with all the details of operating it, knew the motor car business very well and generally had a type of personality that you look for in the management field. We had undertaken the problem of managing Opel with the approach that he would provide American technical know-how and skilled technical personnel; but that over in the fields that particularly related to German public relations, relations with dealers, etc., we would retain as many of the German executives as possible, so that we would get the advantage of the combination of knowledge and experience in Germany with technical knowledge of how to design and build cars and trucks. Geheimrat was a very important person on the German side of the management, so I was eager to retain him as part of the management; and so, therefore, when he began discussing with me the idea of selling the rest of his stock, I tried earnestly to discourage him from selling out.

"Q. With this memorandum of Sloan's before you, and with your recollection refreshed by it, can you state whether it was in October, 1931, that you discussed with Mr. Wilhelm von Opel an arrangement whereby he might retain his shares for a longer period of time? A. I cannot remember that exact date. I think it is seventeen years ago

and I don't think I would be honest if I said I could 2389 remember the exact date at that time. I can remember the substance and principles of things we

were striving for, but I just have not got that kind of memory; so therefore I cannot say, I cannot identify, any exact dates. If it were useful, those dates could be nailed down; if they are in controversy and there are two sides to the story, you can certainly get those nailed down. A little research upon my travels would settle that."

Mr. Baum: Skipping now, to the question toward the bottom of the page:

"Q. Do you recall whether you reported to Mr. Sloan your conversations with Mr. Wilhelm von Opel about his retaining his stock for a while longer? I am not asking you for your general practice on reporting to Mr. Sloan, but whether you recall reporting to him on this particular matter? A. There is where the memory thing comes in again. To remember a telephone conversation of some kind or something you did seventeen years ago; all I can say is that you have to exclude that. Quite obviously, if you are on the operating side of an industrial company, you report to the financial guys and lawyers, and let them carry on the rest of the day's work. You tell them what in principle you would like to get done, and they go along and do the best they can and mop up in back of you.

2390 "Q. I call your attention to the first paragraph of this document that has been marked as Defendant's Exhibit B, which states: . . .



"I just want to put on record what Mr. Mooney told me over the telephone as to his recommendation with respect to the holdings of Dr. Wilhelm in Adam Opel A. G."

"What I am asking you is whether you recall having such a telephone conversation? A. No, I do not."

"Q. Have you any reason to think that the statements in this memorandum, insofar as they refer to such a conversation with you, are inaccurate? A. I have no reason to believe—"

Mr. Gallagher: Just a moment. At that point I object. I thought we were going to cover that. This is one of the exhibits excluded from evidence, 55 and 56, definitely a hearsay memorandum prepared in America, not prepared abroad. As a matter of fact, I think it is completely irrelevant that we are going any further with the question on the statements appearing in the memorandum, when the memorandum has been excluded.

Mr. Baum: I agree, Your Honor; I will skip that. I will go to the top of page 15. I will read the answer after the objection there—the ninth line:

2391 "A. I recall that after my conversation with him at Russelsheim, he seemed to be quite convinced—and by this time our relations were of such a nature that we were quite frank with each other—he seemed to be quite convinced that I meant what I said when I told him that I wanted him to retain his position as chairman of the board and retain his financial interest in the company."

"Q. Do you remember whether Mr. Wilhelm von Opel made a definite proposal that he would retain his stock on certain conditions? . . . A. I remember he told me he would proceed on the course generally of retaining his stock. We did not have—at least I have no recollection of the specific conditions at the time."

Mr. Baum: Going to the top of page 16:

"Q. Do you recall whether Mr. Wilhelm von Opel stated that he would be willing to retain his stock if the obligation of General Motors to pay for it were changed from one to pay in marks to one to pay in dollars? \* \* \* A. No, I do not.

"Q. I now show you a copy of a radiogram or telegram dated October 23, 1931, from Wilhelm von Opel to Mr. Sloan, at General Motors, New York City. This document consists of two pages and is marked Defendant's Exhibit 2392. Have you read that radiogram, Mr. Mooney?

A. Yes, sir.

"Q. Can you state whether this radiogram dealt with the negotiations which you have already described between you and Mr. Wilhelm von Opel, looking toward his retaining his stock?"

Mr. Gallagher: Will you please identify, Mr. Baum, that exhibit, now, with our new exhibits, so that the record is correct on it?

Mr. Baum: I believe that is Defendant's Exhibit 6 at present.

Mr. Gallagher: All right.

Mr. Baum: Page 16:

"A. Yes, it fits in with it.

"Q. With your recollection refreshed by that radiogram, can you now recall whether Mr. Wilhelm von Opel proposed to retain part of his stock if he were guaranteed payment in gold instead of marks? \* \* \* A. I can remember that he proposed to retain part of his stock; but the technical details about what the foundation should be on them, whether gold or marks, I cannot remember.

"Q. Do you know what was the result of these negotiations between Wilhelm von Opel and General Motors about

Mr. von Opel's retaining some or all of his 2393 stock? \* \* \* A. I can remember that it went into some kind of confusion and misunderstanding between Germany and New York somewhere. Just how that got cleared up or what happened, I can't remember.

"Q. Do you know whether any arrangement was ever made between General Motors and Geheimrat whereby he did retain his stock? \* \* \* A. I can't remember that positively, no.

"Q. Do you know whether at that time Geheimrat went ahead with his intention to sell his stock to General Motors? \* \* \* A. I can't remember."

Mr. Baum: Skipping, now, to the top of page 18:

"Q. Do you mean your testimony to be, Mr. Mooney, that you are unable at the present time to recall whether these negotiations with Mr. Wilhelm von Opel resulted in his retaining his stock, or whether he went ahead and sold it? A. Yes, that is what I mean. \* \* \*

"Q. During your discussions with Mr. Wilhelm von Opel about his retaining stock in Adam Opel A. G., were you ever told by him that he no longer owned any stock in Adam Opel A. G.? \* \* \* A. No, I was not.

"Q. Were you ever told by anyone else at the time 2394 of those negotiations that Mr. Wilhelm von Opel no longer owned the stock? \* \* \* A. I don't remember that.

"Q. Do you remember whether you were ever told at the time of these discussions with Mr. Wilhelm von Opel about his retaining stock in Adam Opel A. G. that he no longer owned any stock? \* \* \* A. No, sir.

"Q. Do you mean, Mr. Mooney, that you were not so told? I am not clear how you meant to answer the question. A. The only thing I can remember— \* \* \*



"A. —about that, I had general reasons to presume he was still chairman of the company, in conformance with the general understanding that we had had: \* \* \*

"Q. At the time you were discussing with Mr. Wilhelm von Opel his retaining stock in Adam Opel A. G., was it your understanding he owned the stock you were discussing? \* \* \* A. Yes, sir.

"Q. And at the time of these discussions, were you ever told by Wilhelm von Opel that he had made a gift of his stock in Adam Opel A. G. to his son Fritz? \* \* \* A. No, I was not.

"Q. When did you first hear of such a gift? \* \* \* A. Never heard of it.

2395 "Q. At the time of these negotiations with Mr. Wilhelm von Opel about his retaining stock in Adam Opel A. G., did you ever receive any proposal that Mr. Fritz von Opel hold shares of stock in Adam Opel A. G.? \* \* \* A. No, sir.

"Q. If the proposal to retain shares of stock in Adam Opel A. G. had been made in behalf of Fritz von Opel, rather than by Wilhelm von Opel, would you have favored the acceptance of the proposal? \* \* \* A. No, sir.

"Q. Will you please give us the reasons for your answer? \* \* \*

"Q. Will you please tell us why you would not have been interested in the proposition that Mr. Fritz von Opel retain or hold stock in Adam Opel A. G.? \* \* \* A. Because Fritz had shown disinclination to be mixed up with the management of the company.

"Q. Had Mr. Fritz von Opel worked for General Motors Export Corporation? A. Yes, sir.

"Q. Do you recall in what capacity he had been employed by it? A. Not very clearly. As I recollect it he was employed over at General Motors Continental S. A., Antwerp, Belgium, for a while.

2396 "Q. What type of plant was the plant in Antwerp? A. An assembly plant.

"Q. Do you recall what Mr. Fritz von Opel's duties and responsibilities at that plant were? A. No, I do not."

Mr. Baum: That concludes the direct examination, Your Honor.

(The questions on cross-examination were read by Mr. Gallagher, and the answers were read by Mr. Boland.)

Mr. Gallagher: This is the cross-examination by Mr. Gallagher:

"Q. Mr. Mooney, are you familiar with the fact that this week General Motors took over control again of the Adam Opel A. G. Plant of Germany? A. I saw it in the newspaper a couple of days ago, yes. \* \* \*

"Q. Subsequent to April of 1929, when General Motors assumed control of the Adam Opel A. G. Works in Germany, did you go to Germany very often to visit those facilities? A. Well, yes, I did; I went rather often.

"Q. You stated that Geheimrat von Opel and you became quite frank after a period of time; on how many occasions did you see him in Germany during the first two or three years of G. M. operation of those facilities? 2397 A. Oh, perhaps an average of a few days every three months.

"Q. How did you address him? A. Geheimrat.

"Q. You did not call him Bill or William? A. No, sir.

"Q. You have previously stated in your testimony that he made no statement to you about any gift to Fritz. Did he ever make any statement to you about any gift to his daughter? A. No, sir.

"Q. Did he ever discuss with you the settlement he made on his daughter at the time of her marriage? A. No, sir.

"Q. Did he ever discuss with you how he had invested his wealth? A. No, sir.

"Q. Did he ever discuss with you the contents of his will? A. No, sir.

"Q. Mr. von Opel was considerably older than you, was he not, Mr. Mooney? A. Yes, I think he was about ten years older.

"Q. How did he address you, by what salutation? A. Mr. Mooney.

2398 "Q. In 1929 when General Motors determined to acquire the Opel Works, did you make that decision for the General Motors Corporation? A. No, I made it as part of the group that visited Germany at that time.

"Q. Who was the deciding factor in the purchase? A. The group.

"Q. You were one of the group? A. Yes, sir.

"Q. How large a group was that, Mr. Mooney? A. About five, as I recollect.

"Q. Who else were in that group? A. Donaldson Brown.

"Q. Donaldson Brown, Financial Adviser of General Motors? A. Yes, chairman of the Finance Committee.

"Q. John Thomas Smith was General Counsel? A. Yes, sir.

"Q. Who else, Mr. Mooney? A. Albert Bradley.

"Q. What was his position? A. Vice-President in Charge of Finances.

"Q. Anybody else? A. I think Fred Fisher was in on part of it.

"Q. What was his position with General Motors?

2399 A. Vice-President and member of the Board and Executive Committee.

"Q. Was there anybody else, to your recollection? A. Myself, of course.

"Q. And yourself? A. Yes, sir.

"Q. Was Mr. Sloan a member of that group? A. No, sir.

"Q. He was not? A. No, sir.

"Q. Did he participate in the determination to acquire these works? A. Yes, he did.



"Q. Subsequent to or contemporaneous with the time you gentlemen— A. Contemporaneously.

"Q. Did you make that determination here in the States or in Germany? A. Germany.

"Q. Where was Mr. Sloan at that time? A. New York.

"Q. Did your group submit the proposition to him? A. Yes, sir.

"Q. Did you have to await his approval? A. Those things were decided as part of the group. He did not  
2400 take any positive position. We decided as a group those matters that were of mutual interest to him.

"Q. If he had objected would the deal have fallen through? A. Not necessarily.

"Q. Geheimrat von Opel knew Mr. Sloan personally, did he not? A. Yes, sir.

"Q. He also knew Mr. Donaldson Brown? A. Yes, sir.

"Q. He knew you, of course? A. Yes, sir.

"Q. He knew Mr. John Thomas Smith? A. Yes, sir.

"Q. Did he know any of these other gentlemen you mentioned—Mr. Bradley? A. Yes, sir.

"Q. In other words, is it true that he knew all of the top level men in General Motors? A. Yes, sir.

"Q. As a matter of fact, those were the men with whom he dealt when he entered into the escrow agreement with General Motors; is that not correct? A. Yes, sir.

"Q. And it is a further fact, is it not, that the  
2401 escrow agreement was entered into between Wilhelm von Opel and General Motors Corporation; not General Motors Export Subdivision; is that correct? A. That is right.

"Q. Getting down to the latter part of 1931, specifically, between the date October 17, which is just prior to the date appearing on Defendant's Exhibit B which defendant's counsel showed you, which is the Donaldson Brown memorandum; just prior to that time and for a period

of the next three or four weeks, when was it during that period that you first learned that a call had been made on General Motors for them to purchase the remaining Opel shares? A. I don't remember when a call was made.

"Q. Defendant's Exhibit B, dated October 22, reflects a telephone conversation which you had with Mr. Sloan. Do you recollect where you made that telephone call from? A. No, I do not.

"Q. Do you have any recollection whether or not at that time you were in Germany? A. No, I have not.

"Q. Do you recollect at the time that these conversations which you have mentioned, with respect to Wilhelm von Opel retaining his interest in the Opel Works; 2402 whether or not John Thomas Smith came to Germany to participate in those discussions with you?

A. I have a vague recollection of his being there shortly after I had had one of the conversations.

"Q. You at this time, if I understand you correctly, have no specific recollection of any details that transpired at that time; only a general recollection that discussions were had with Geheimrat von Opel looking toward his retaining a stock interest in Opel; is that correct? A. Yes, that is right.

"Q. Do you recollect how many times you talked to him at this time about this situation? A. Well, several.

"Q. Do you recollect that at this time Fritz von Opel also came to Germany? A. No, sir.

"Q. Do you have any recollection of the fact that Fritz von Opel had served prior to this time a notice on General Motors calling on them to purchase the Opel shares? A. No, I have not.

"Q. When you had your conversations with Wilhelm, then, do I understand you correctly you had no knowledge of the fact that a call had already been made on General Motors to purchase these 600 shares? A.

2403 I have no recollection of it; you use 'knowledge'; I say 'recollection.'

"Q. Am I correct in saying, Mr. Mooney, that you were in favor of Wilhelm von Opel retaining what you thought his interest to be in Opel? A. Yes, sir.

"Q. Am I also correct in stating that from your knowledge, John Thomas Smith, Alfred Sloan, Mr. Bradley, Mr. Donaldson Brown and all the other gentlemen whom you have mentioned as part of this group, were interested in having Wilhelm von Opel retain what you thought his interest to be in the Opel Works? A. They left it to me to operate these properties, and, in turn, provide largely the management personnel for them; so that when I took the position that I wanted to have Geheimrat retained in the management as chairman, they went along with that.

"Q. Do you recollect that John Thomas Smith—you said you turned these matters over to the lawyers—do you recollect that John Thomas Smith was also interested, as you were, in having Wilhelm retain what you thought his interest was? A. That is right.

"Q. Do you recollect generally from your own recollection, as refreshed from the memoranda which defense counsel has shown you, Defendant's Exhibit 204 B, that Donaldson Brown and Mr. Sloan were likewise interested in having Opel retain what you thought his interest to be? A. Yes, that is right.

"Q. By the way, Mr. Evans was manager of the Opel Works, was he not? A. Yes, sir.

"Q. He was likewise interested in having Wilhelm von Opel retain what you thought his interest to be in Opel? A. Yes, sir.

"Q. Do you recall Mr. Wronker-Flatow? A. Yes, sir.

"Q. Mr. Flatow was counsel for that subdivision of General Motors Export; is that correct? A. He was for a while. I am a little vague about that. \* \* \*

"Q. Pertaining to the Opel German properties? A. He was counsel for a while, and then took an executive job down at Opel. I am a little vague about that.

"Q. He was also interested in behalf of General Motors



in having Mr. Opel retain what you thought his interest to be? A. He never discussed the thing with me 2405 and I never asked him whether he was:

"Q. You did not ask Mr. Flatow his ideas? A. No, sir.

"Q. These other gentlemen were interested, as you were, in Mr. Opel retaining what you thought his interest to be? A. That is right.

"Q. At that time, if I understand you correctly, Mr. Wilhelm von Opel indicated to you he was interested in retaining what you thought his interest to be, is that correct? A. He was willing to retain his interest as part of the business of retaining the job of chairman, and going along to give us a hand to operate the company.

"Q. And retaining this stock interest that you discussed? A. That is right.

"Q. But in spite of the unanimity of desire on the part of all you gentlemen, the interest was not retained; is that correct? A. That is the thing I don't recall, whether it was retained or not.

"Q. You know that the Opels did not have any interest in the Opel Plant subsequent to 1931, do you not, 2406 Mr. Mooney? A. I would have to take your say on that. I really don't recall that now. I have sort of lost track of that.

"Q. You never saw the records of General Motors to disclose whether or not they finally, after the fall of 1931— A. I suppose I did at the time. At the time, as I say, I knew all about these things; but now, seventeen years ago, I could not say, 'Well, they did this or that.' I just can't recollect.

"Q. Do you not recollect that Fritz von Opel was opposed to retaining an interest in the Opel Works? A. I don't know that.

"Q. Just to clarify a few other things, Mr. Mooney; you stated that Fritz von Opel worked for General Motors Export Continental S. A., at Antwerp. Is it not a fact

that while Mr. von Opel was making a study of methods of production and operation, he was not an employee of General Motors Export? A. I don't remember.

"Q. Is it not a fact he never drew any salary from General Motors Export? A. I don't know. He passed out of my sort of horizon or area of visibility.

"Q. You have no recollection? A. Not only no 2407 recollection, but I did not know at the time what he was doing; and it did not make any difference to me."

"Q. When you say employed, you are not certain he was employed, as we use the term usually; he was around the property, but whether on the payroll you could not state at this time? A. No, I just don't know; did not know at the time."

Mr. Gallagher: Going over to page 31:

"Q. Have you stated previously, or does the memorandum which you prepared with respect to the dates of your association with General Motors reflect when you left Germany? A. No, sir.

"Q. Do you recollect when you left Germany? A. I was in and out.

"Q. I mean when you left prior to the war. Was it 1939, 1940 or 1941? When did you sever your connection? A. (Witness refers to memorandum.) Yes, in 1940, it says here. Have you looked at this at all?

"Q. Just briefly. Do you remember independently of that memorandum whether or not you left in 1940, or was it 1941? A. I was in Germany the last time in the spring of 1940.

2408 "Mr. Gallagher: That is all, Mr. Mooney. Thank you."

Mr. Burling: If Your Honor please, there are two pending arguments—two motions to strike. One concerns the

Giulini document, and one concerns Defendant's Exhibit 30. I would respectfully suggest that we discuss the latter one now, because the memorandum directly relates to the subject matter of the Mooney deposition. There was a motion made to strike this document.

Mr. Gallagher: Will you identify to the Court Defendant's Exhibit 30, which is the letter to Wronker-Flatow from Mr. Smith we claim is misleading?

Mr. Burling: The motion to strike was made yesterday—I myself did not take the deposition; I was not in the matter then—I left to Mr. Baum to argue. Since then Your Honor said we could speak further about it today. I find that Mr. Baum was correct: there was an additional reference.

Mr. Gallagher: I thought His Honor really ruled on this yesterday.

The Court: No; I will give him a chance to argue.

Mr. Gallagher: All right.

Mr. Burling: I submit that the motion to strike cannot be supported, on the ground that the plaintiff here made the following admission concerning this document: 2409 that on June 2, 1932, John Thomas Smith, General Counsel of General Motors Corporation, sent a letter to Mr. Wronker-Flatow in the regular course of business; that said letter was received by Manfred Wronker-Flatow; that at the time the said letter was sent a file carbon copy thereof was made, by General Motors Corporation in the regular course of business; that it was the regular course of business of General Motors Corporation to make such file carbon copy; and that the exhibit attached hereto is a true and correct copy of said letter and of said file carbon copy.

I submit that under the Federal Shop-Book rule—and I am sure Your Honor is familiar with it. Would it be helpful to you if I read it?

The Court: I know the shop-book rule, but you may read it.



Mr. Burling: "In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence, or event, if it shall appear that it was made in the regular course of any business and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event 2410 or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight but they shall not affect its admissibility. The term 'business' shall include business, profession, occupation, and calling of every kind."

Now, yesterday my friend, Mr. Gallagher, said the problem was the same as the problem of the other two General Motors documents. I submit that this letter shows on its face that that is not so. There is no multiple hearsay here. In this case, John Thomas Smith, in the regular course of his business as general counsel of General Motors, is advising Wronker-Flatow, as general counsel of Opel, what he, John Thomas Smith, had personal knowledge of—that is, what Wilhelm von Opel said to him and what Fritz von Opel said to him.

As I say, there is no multiple hearsay problem, as there was in the case of the other document, where Sloan was repeating to Brown what Smith had told him Mooney had said over the phone. I admit that that was multiple hearsay.

Mr. Gallagher: Have you finished?

Mr. Burling: So our argument is that this writing is a matter of the personal knowledge of John Thomas Smith of what admissions were made to him by Wilhelm and Fritz von Opel and, hence, within the scope of the statute. 2411 The Court: Let me see that Federal statute which you have there.

2412 You see, I make a distinction, Mr. Burling, between what is referred to here as a writing in the form of an entry, whether in a book or a memorandum, or an act and a writing which recites a conversation with another party. This letter indicates an act on the part of the General Motors Corporation, of which this man is an agent, so that any act that he took might be admissible if that act is material; but I do not think that a memorandum of a conversation you had with another party, even if it is written, comes within this. The conversation itself would not be admissible unless it was an admission—

Mr. Burling: That is exactly my point. I agree. If Smith was recording what Jones told him Brown told him Fritz von Opel said, I think I would have to agree. I say there is no hearsay here except as to Smith.

The Court: Isn't that enough?

Mr. Burling: No, if Your Honor please. The shop-book rule has always been recognized.

The Court: The shop-book rule is here. The shop book is a memorandum of a transaction which is written into the shop book. Now, this statute extends it to a memorandum of an act or an event, not the substance of a conversation. If you record an act of the corporation, just like you do in the shop book, so and so was shipped that day, or such and such an act was done, and they  
2413 record it, any writing of that would be evidence of that; but a conversation that this man heard von Opel telling him—

Mr. Gallagher: Your Honor—

The Court: Just a minute. I will call on you if I need help. According to Geheimrat, "He never received my cable," and so forth. "This time Fritz is violently opposed." That is not an act of this company or of this man in the regular course of business.

Mr. Burling: It is a report of admissions made to Gen-

eral Motors representatives by the von Opels, who are the real parties in interest in this litigation. The Office of Alien Property has proven almost all its cases by documents of this sort. Many other cases, of considerably larger sums, are coming up involving this same problem. We have done enormous work on it.

The Court: Yes; I can understand.

Mr. Burling: Before Your Honor rules, I will ask leave to submit a memorandum.

The Court: I will be glad to consider it. The point I have in mind is this. I am perfectly familiar with the fact that you can lay the foundation to contradict Wronker-Flatow—Stansfield—by anything in this memorandum which brought to his attention a fact which he either acquiesced in or confirmed by a replying letter, or 2414 if he was challenged to make a statement and he did not, it might be an admission on his part. I am familiar with that approach.

The thing that concerns me is, where we have a letter which contains a statement as to what the attitude of another person was—coming right here, the attitude of Fritz violently opposing—whether that recital of the feeling of a certain individual is an act or an event or a transaction or occurrence within the meaning of this statute. There may be some cases on that, on this very statute. I will be glad to consider them if you produce them.

Now, a statement of a person made to him is not the thing that ordinarily is an event within the terms of that.

Mr. Burling: We have many cases that we say do say that. May I say this? Will Your Honor reserve the ruling until final argument in this case and give us a chance to prepare a memorandum on it, which we will submit?

The Court: Yes, I am perfectly willing to do that. The importance of my decision here is whether I rely upon it in the final analysis or not.



Mr. Burling: To be quite frank, Your Honor, my concern with this is equally with the precedent value of this. I have personal knowledge of cases involving hundreds of millions of dollars.

2415 The Court: Yes. I will tell you my misgiving about it. Of course, this is a letter from an outside party. It is a letter from the general counsel of the General Motors. That is who it is?

Mr. Burling: Yes.

The Court: There is not any question about the authenticity in this case. I think you have established it.

Mr. Burling: It is admitted, and the regularity of the course—

The Court: A letter in the regular course of business. That reduces the question to the proposition whether this is a recordation or a memorandum in writing of an act, transaction, occurrence, or event in the regular course of business and it was the course of business to make such memorandum.

What I am having my trouble with is whether it would be the custom of a business to make a memorandum of a conversation. We know it is customary to make a memorandum of an act, such as a shipment, or such as what the price is. That is oftentimes told. That is the shop-book entry. It is the contemporaneous writing down of an event which is a part of the business.

Now, is it the custom, in a business of this sort, to make a memorandum or record at the time of the act, 2416 or within a reasonable time thereafter, of a conversation? That is apparently what this is. I have not read this carefully enough to see whether there are any acts in that.

Mr. Burling: May I state what my position is?

The Court: Yes. Tell me what you are trying to prove on it.

Mr. Burling: On the question of admissibility, we say that where negotiations are carried on by Geheimrat von

Opel in 1932 to reacquire the Opel shares from General Motors, those negotiations looking toward a transfer of stock are transactions within the purview of the statute.

The Court: Yes, that would be. This is a recordation of the transactions.

Mr. Burling: I believe, if Your Honor please, that the statute was passed for the precise purpose of getting away from the narrow rule that only things kept in shop books, in technical books, could be kept, but that writings kept in the regular course of business—

The Court: Your shop books, as a rule, did not record conversations. He says, "Fritz was very violently opposed to his father's proposition; in fact, this opposition was one of the reasons why he wanted to return to lay them before his father in person."

2417 I would like very much to be enlightened on it.

Mr. Gallagher: Your Honor, I have the decisions here, and this has been determined in this circuit by 147 Fed. (2d).

The Court: Here is my situation with regard to all of these items. You gentlemen know the rule, I am sure, in equity in these non-jury cases. The important proposition is what I consider in the final analysis. It is not whether I admit it and then strike it. That is not so important. The question is whether I consider it ultimately.

I am perfectly willing, in view of the importance of this as a precedent in other cases, to permit him to submit his authorities at the time of the hearing and, you, of course, submit yours. What I am doing now is to tell him the difficulties I am having and see if he can find anything on it.

I have not had any trouble on the writing. In the course of business, if a man would make a writing of this sort recording an event, I have not any trouble with the fact at all that it is shop book.

The only thing I have trouble with is whether that writing is entitled to create impressions of one member of the company as to the attitude of a person, a recital of what

was said to him at different times. If the cases are 2418 with you on that, of course, I will admit it. I am perfectly willing to reserve decision on that. That to some extent might apply to some of these other cases.

Mr. Burling: We will direct our attention to that point, Your Honor.

The Court: All right.

Now, let me ask you this, Mr. Gallagher, on these other points. These are things that occur to me. Maybe they would dispose of them; I do not know.

Mr. Burling has granted that his experts say they cannot tell about these signatures by way of comparison. If they cannot tell about these signatures by way of comparison, I wonder if I can. That is the question I was going to ask you. Ordinarily, you can have an admitted handwriting in evidence and compare it with others. You have an anomalous situation here—an expert cannot say that they are the same.

Mr. Gallagher: Might I say, Your Honor, I submit that the question of the authenticity of the signatures, even if their experts could have proven them, would not have aided—

The Court: I have got to hurdle that one first. That is the first thing I have got to get over.

Mr. Burling: If Your Honor please, three of the documents are not subject to this vice, because the 2419 signatures are identified unquestionably, without qualification, by von Opel; that is, 90, 98, and 97. I have the record references handy.

The Court: Well, I will come to those a little later. Tell me what you think about these others on authenticity.

Mr. Burling: Our position is that where the letter appears to be signed by the officers of the company, where the letter has the stamp signature of the corporation, where it is on the corporate letterhead, a presumption that they are corporate documents arises—that is, that we have made a prima facie case—and the question would,



rather, be whether my friends would call experts to show that they were not.

The Court: I had not thought that that was the rule. I thought the burden was on the person who introduced them to prove them, not by stamps, but from someone in the organization.

Mr. Burling: I won't press that.

The Court: I think that is the rule.

Mr. Burling: Then I submit, if Your Honor please, if that is Your Honor's ruling on authenticity, I would agree that 99, 100, 101, 102, 103, and 104 cannot be established by us.

The Court: Well, that is my inclination, unless you 2420 show me something to the contrary.

Mr. Burling: Frankly, I have nothing on it.

The Court: I do not want to be quick on any of these points, but I do not want to have any gross error here by violating an obvious rule of evidence when challenged.

Mr. Burling: In order to simplify matters, I will withdraw my offer of 99 through 104.

(Defendant's Exhibits 99 through 104 were withdrawn.)

The Court: That leaves 90, 97, and 98?

Mr. Burling: Yes, if Your Honor please.

The Court: Mr. Gallagher, let me tell you a little bit my present impression on this. I am going to leave open the argument, for you on the one hand and Mr. Burling on the other, what a subsidiary does, a subsidiary being a separate corporation. I am going to leave open the argument whether you have to show affirmatively a continuendo of the business, within the knowledge of the principal corporation, after war starts. I will leave that open, because all you are asking me to rule on now is the question of leaving things in evidence for possible consideration.

I frankly do not know—once we have Uebersee Korpo-

ration, which owns all the stock of this Trans-  
 2421 danubia, as I understand; we find one of the officers  
 of Uebersee before the war carrying on in the busi-  
 ness of mining bauxite, and then there comes the war, and  
 we have a circumstance (I know the limitations that you  
 argue with regard to it) of protecting financial interests  
 over there—whether the fact that this officer of Uebersee  
 carried on business before the war would make it manda-  
 tory on him or his associates to issue a directive, if they  
 had a directive, to the subsidiary to stop the business, or,  
 if it challenged them, to take affirmative action, if they  
 could, with regard to the subsidiary, or whether they could  
 sit absolutely tight, as Dr. Meier said they did. I do not  
 know the law on that, and I am going to leave it to you  
 gentlemen to argue.

But let us assume that I should find, in accordance with  
 Mr. Burling's argument, that there was a duty on the part  
 of the owners of Uebersee, a neutral corporation, to abso-  
 lutely order these subsidiaries to stop. Suppose I should  
 say that. Wouldn't the fact that the subsidiaries carried  
 on the relationships which would lead to doing business  
 with an enemy be a material point, and wouldn't the fact  
 of the writing of letters be a spontaneous act showing the  
 doing of business?

Mr. Gallagher: These letters, which, we submit, are  
 clearly inadmissible, would leave no inference to be  
 2422 drawn thereafter that we continued business. As a  
 fact we do not whether Transdanubia did or did not.

The Court: Then, you are getting to the other point. He  
 is trying to establish that Transdanubia did and that these  
 letters—These are authenticated, aren't they?

Mr. Gallagher: No. These letters are the same letters  
 out of Germany, not out of our files, as 99 or 104. They are  
 out of the files of Giulini Brothers and they relate to a  
 letter from them to Transdanubia—

Mr. Burling: May I read the record?

Mr. Gallagher: Yes.

Mr. Burling: At page 1371, with regard to Exhibit 97, I asked Fritz von Opel:

"Question: You recognize the signatures of Krausz and Timar, do you not?"

"Answer: Yes, I do."

"Question: And they appear on the third page of this document?"

"Answer: Yes."

Later, at 1378:

"Question: At any rate, you recognize the signature of Georg von Krausz, do you not?"

"Answer: Yes."

"Question: And von Krausz had what position 2423 with Transdanubia?"

"Answer: He was one of the managers jointly with Dr. Timar."

With respect to Exhibit 90, I asked the question:

"In any event, this document, 90-A, is signed by one of the managers of Transdanubia?"

"Answer: Yes. That is signed by Dr. Timar."

The Court: That is authenticated. Were those before the war?

Mr. Gallagher: No, Your Honor. 98 is before the war, but 90 is not. 90 is February, 1942, 97 is March of 1940. 98 is October of 1940, when von Opel is in America here, and it is a record of a conference—complete hearsay—in which Giulini—

The Court: I do not have it here.

Mr. Gallagher: 98?

The Court: 97. Let us take them up in order. Let us see number 90.

We are talking about 90, 97, and 98; is that it?

Mr. Gallagher: That is right.



The Court: Now, here is number 90, which is a letter from Transdanubia to Giulini Brothers.

Who were Giulini Brothers?

Mr. Gallagher: They are a purchasing outfit in Germany.

The Court: Now, he says, "Referring to your letter 2424 of January 23, 1942, we wish to advise you as follows . . . The quantities established by you"—

That is a letter of doing business, isn't it?

Mr. Gallagher: It is a letter from Transdanubia—that is what it purports to be—out of the files of Giulini Brothers, but there has been no basis laid here that they were kept in the regular course of business, and we have not stipulated anything on this.

The Court: This is a little different. We have a letter here of a corporation, which has been identified as being signed by the president, and who else?

Mr. Gallagher: Well, von Opel says, "I guess it is."

The Court: What is the name?

Mr. Gallagher: At the top of page 1980, where Mr. Burling says:

"I show you Defendant's Exhibit 90-A, which you have previously identified as being the letterhead of Transdanubia"—earlier he had merely offered it for the letterhead purpose—"state, if you will, whether the signature on the right hand—there are two signatures—the right-hand signature is not that of Dr. Timar.

"Answer: Yes, I guess it is."

2425 The Court: That might go to the weight.

Mr. Burling: At 1381, after some more conversation, von Opel said unqualifiedly that it was. My question was:

"In any event, this document, 90-A, is signed by one of the managers of Transdanubia?"

He said:

"Yes, that is signed by Dr. Timar."

The Court: Gentlemen, I do not have very much doubt about the admissibility of these. The effect of what I decide on them I am very much in doubt on. I will leave these in, over your objection, and save your point.

Mr. Gallagher: We save our objection.

The Court: I want to make it clear at this time that I am not ruling that the fact of the writing of these letters imposes the liability on Uebersee, the plaintiff here, of doing business with an enemy. I am leaving that entirely open for argument, but I am leaving these in as properly authenticated and as indicating that they show the fact that Transdanubia—whatever that fact is worth in this case—might have been doing business, or tending to show that it was doing business, with an enemy. In other words, if I had the question of Transdanubia before me, whether it was doing business with an enemy, I think this would be evidence of it.

2426 Now, as to Uebersee, I am not going to rule right now that I think that that has any relevancy to Uebersee's position, but I am going to leave that open for you to argue,

Mr. Gallagher: May I clarify, where Your Honor is ruling, that the record in no wise reflects and there has been no showing that these exhibits were kept in the regular course of business by Giulini Brothers, and they have not been identified by anybody from Giulini Brothers or Transdanubia, and Mr. Frick, from whom they were obtained, is still living and available in Germany.

The Court: I think the circumstance here that they have produced the files of Giulini and that the president of Uebersee, which is the sole stockholder, as I understand it, of this Transdanubia, identified the signatures and that it was the stamp of the corporation, and the very articles them-

selves indicate that it was the doing of business—it dealt with business matters—makes a prima facie case out.

Mr. Gallagher: May I correct Your Honor? You said the president of Uebersee. Mr. von Opel is not an officer of Uebersee, as I know Your Honor is aware of.

The Court: I cut out the "president"; a very prominent stockholder. I think that makes out a prima facie case of that.

2427 Now, what weight I am going to give to it, I have not the slightest idea. I am going to depend on that very largely. I would like for you to dwell on that pretty thoroughly in argument, because it might very well be that the separate entity situation, even of a subsidiary, would negative the claim of the Government. On the other hand, I have an entirely open mind on it. I just do not know the answer. So that I will leave that open for argument.

Have we finished everything now?

Mr. Gallagher: Now, Your Honor, I wish to recall Mr. von Opel in rebuttal, and then we have two questions of Dr. Kronstein, and I believe we will have concluded.

The Court: All right.

Thereupon—

FRITZ VON OPEL was called as a witness in rebuttal and, having been previously duly sworn, was examined and testified as follows:

### *Direct Examination*

By Mr. Gallagher:

Q. Mr. von Opel, there were some questions put by Mr. Burling. You were in the courtroom yesterday, were you not? A. Yes.

2428 Q. You heard Mr. Burling's cross examination of Dr. Meier? A. Yes.

Q. There were some questions asked by Mr. Burling and



put to Dr. Meier by Mr. Burling with respect to conversations with you with relations to exhibits which pertained to the so-called Swiss francs transaction in 1931. Did you hear those questions and answers? A. Yes, I did.

Q. And Dr. Meier stated that you had discussed it with him. I will ask you, Did you discuss those exhibits in German with Dr. Meier at my request? A. Yes, I did so.

Q. All right, that is all.

Now, in Mr. Burling's cross examination of Dr. Meier he asked him whether or not he knew that you, Fritz von Opel, had stated that the Tanganyika plantations were valued at \$12,000. Did you ever make such a statement? A. No, I did not.

Q. What statement did you make before the Alien Enemy Board? A. I checked the entire record, and the only statement I could find is the following: I explained in detail how I acquired this plantation in Tanganyika Territory and said I am asked about its value in the books of 2429 Overseas, and I say it is valued at approximately 200,000 Swiss francs, or \$40,000.

Mr. Burling: May I ask if counsel will fix the place in the record where this statement appears?

Mr. Gallagher: I am sorry. Counsel is not able to do it. Mr. von Opel checked the record, after you made that statement, himself personally.

Mr. Burling: I object to any testimony about what is in the record unless I be told the page number.

The Court: I won't take what was in the record; I will just take his answer. What is this?

Mr. Gallagher: Tanganyika plantation.

The Witness: It is called the Opel Estates.

The Court: How do you spell it?

Mr. Gallagher: T-a-n-g-a-n-y-i-k-a.

By Mr. Gallagher:

Q. Is that it? A. Yes.

Q. Mr. von Opel, Mr. Houghland, when he was on the stand, stated that he met you for the first time in 1934 in Paris. Is that correct? A. No, that is not correct.

Q. Mr. Houghland further stated that you came to Nashville for the first time in 1935, driving a Mercedes car. 2430 Is that correct? A. No, that is not correct. That is wrong by about two years.

Q. Will you state when you met Mr. Houghland for the first time? A. I am not definite whether I met him even before my first visit to Nashville, but I am absolutely sure that I was in Nashville, driving this Mercedes car, late in 1933.

Q. And that was the time when you met Mr. Houghland with the Mercedes? In 1933? A. Yes.

Q. Have you any way by which you have refreshed your recollection, so that you can state with assurance that you were driving the Mercedes in 1933? A. I definitely have. I had this car only for about six months. It was unsatisfactory and I returned it to the factory at the end of 1933, and I remember it vividly because in 1933 I participated in the International Air Races in Chicago at the World's Fair, and that is where I took the car, and I even had gotten—it was a present of my father to me, but I had negotiated it with the factory—Mercedes factory—and they had given me a rather large discount of 30 or 40 per cent when I promised them I would take it to America and show it at the World's Fair.

2431 Q. Did you have any motor difficulties with that car in 1933? A. Yes. I had to exchange the carburetor. I sent it to the factory and they shipped me another carburetor, which arrived in New York October 27, 1933.

Q. And if I told you that the Collector's Office in New York reflects that, on Form 5101, the entry number of the carburetor was 12830, import number, 140176—

Mr. Burling: I object to the testimony by counsel. If it is a document, it can be put in.

Mr. Gallagher: I am asking him, if I tell him. This is merely to lay the foundation for the —

Mr. Burling: I object to a long statement by counsel.

The Court: That is objectionable.

By Mr. Gallagher:

Q. Did you pay a duty on that carburetor on its importation into the United States in 1933? A. Yes; I paid a slight duty. If I remember correctly, less than five dollars — only a couple of dollars.

Q. Is it your testimony that you shipped that car back out of the United States in 1933? A. Yes. I took it out with an Italian steamer, either the Conte de Savoia or the Rex, to Cannes, France.

2432 Q. Did you ever bring any other car to America?

A. No, I never did.

Q. Now, Mr. Houghland stated that you told him you had fooled the British at Gibraltar with respect to your Liechtenstein citizenship. Did you ever make any such statement to Mr. Houghland? A. No, never. All I told him, when I was detained for a few days, that the Liechtenstein Government got in touch with the Swiss Legation, and I contacted my friends in England, and first I told him — I told him I was very nicely treated and only detained for three days.

Q. Did you ever tell Mr. Houghland that your father owned the stock of the Uebersee Finanz-Korporation? A. No, never.

Q. Did you hear Mr. Houghland state that he always resented the fact that you owned the majority control of Spur? A. Yes, I heard him state so, and I must say I was always aware of this fact.

Q. Were you aware of his resentment? A. Yes, definitely so —

Mr. Gallagher: Mark this.



(Letter was marked Plaintiff's Exhibit 178 for identification.)

2433 A. (Continuing)—and as early as right after the beginning of my acquisition of Spur I was warned by Mr. Hoffacker against the loyalty of Mr. Houghland.

Mr. Burling: I object to this letter on the ground that this is clearly hearsay. It is a letter from Hoffacker to Mr. von Opel, telling him what Hoffacker thought Houghland's view as to John Cole was. It is hearsay.

Mr. Gallagher: I am not offering it for the truth of what Hoffacker stated, Your Honor. I am merely offering it as proof of the fact that he had been advised whether it was true or not; that he had been advised, as early as 1933, and the letter states, "Regarding our relationship with Mr. Houghland"—

Mr. Burling: Just a moment. What would the relevance be, if Your Honor please, of the fact that he was warned, assuming he was, unless Houghland in fact was disloyal?

Mr. Gallagher: Do you want me to state what our theory is on it?

Mr. Burling: I submit, if Your Honor please, that the test of when a letter is or is not hearsay is when there is some relevance to the fact, assuming that what he stated is not true. Now, this must be offered as to the truth of the matter or it is irrelevant.

2434 Mr. Gallagher: We are merely offering it as proof of the primary fact that he was advised to beware.

We are not offering it as proof of the ultimate fact. The Court: He was advised and what?

Mr. Gallagher: And thereafter we suggest that the inference can be well drawn that, having had that picture constantly before him, and knowing that Houghland resented him, it shows, in our opinion, how ridiculous is the statement that he stated on the transchannel call, "My father owns this stock."

The Court: In other words, you want to establish that it is unlikely that he could have made admissions to him if he was hostile to him?

Mr. Gallagher: Our whole proof has been to anybody, but particularly to this man, who he has known at all times resents his ownership and as to whom he has been warned by others; that it would be very unlikely, on a transchannel call, with the Gestapo listening on in England, and then later on in a trans-Atlantic call—neither of which have been corroborated—that von Opel is going to say, "My father owns this stock," when he knows it is going to cause his throat to be cut.

The Court: For that limited purpose, I think it will be admitted to show his hostility. There is only one thing. I do not know whether it rebuts Mr. Houghland or not. He admitted that, didn't he?

2435 Mr. Gallagher: He admitted that he personally resented von Opel, but he did not admit that he knew that von Opel knew how much he resented him. That is the difference.

The Court: You want to show the intensity of it?

Mr. Gallagher: No. I say this: that it is quite apparent—

The Court: What I am getting at is that Mr. Houghland admitted, as I remember it, right along that he was very much opposed to the Germans owning any interest in his outfit.

Mr. Gallagher: That is true.

The Court: And that he would like to have divested them at any time whatever, and he felt that way all along; but, having admitted it, do we prove it here on rebuttal?

Mr. Gallagher: Believe so, Your Honor. I submit that the fact that he personally, in his mind and heart, always resents von Opel and the Germans being in there does not mean that—unless von Opel sensed it or someone told him that to be a fact—von Opel would think he was anything other than a very grateful employee who was getting \$90,000 a year from him.

The Court: You want to bring the fact home to him. All right.

By Mr. Gallagher:

2436 Q. I show you Plaintiff's Exhibit 178, a letter dated August 22, 1933, addressed to Mr. Fritz von Opel, addressed to 56 Pine Street, New York City, and signed—I can't read the signature—dated on the letterhead of Theodore Hoffacker & Company, and ask you if you can identify that letter (handing a document to the witness)?

A. Yes; it is a letter from Mr. Hoffacker.

Q. You received this letter? A. Yes.

Mr. Gallagher: I now offer this Plaintiff's 178 and would merely like to read the second paragraph and call it to your attention.

(Plaintiff's Exhibit 178 for identification was received in evidence.)

Mr. Gallagher (reading): "Regarding our relationship with Mr. Houghland, would see that it appears greatly improved; still I cannot really say that Mr. Houghland's loyalty is all it should be. He seems to harbor within him a grudge against John Cole and apparently does not like to be watched too closely. As you know, I placed our own man in the company as assistant treasurer, and Mr. Houghland appears not to be any too friendly with him. Under all circumstances, we must be prepared to meet any issue precipitated by him. I have not been in Nashville since

2437 last fall. However, it is advisable that you and I go there during your present sojourn in the United States."

By Mr. Gallagher:

Q. You heard Mr. Houghland testify with respect to the fact that you had called him from somewhere in Germany,



at Cologne, transchannel, the latter part of August, 1939, and that the following day he called back and talked again and at that time stated that he called the operator again to find out how to get you. Did you have any telephone calls from Germany with Mr. Houghland in the latter part of August, 1939? A. Definitely not, because at this time I was not even in Germany. I was in Switzerland.

Q. Do you know when you arrived in Switzerland? A. I arrived in Switzerland August 17, 1939.

Mr. Gallagher: Mark this.

(Document was marked Plaintiff's Exhibit 179 for identification.)

The Witness: I found this fact in the books of Overseas, where certain telephone bills and certain hotel bills are booked.

Mr. Burling: I object to these, Your Honor, on the ground of authenticity. There is no showing at all.

Mr. Gallagher: I do not intend to offer them. I am merely going to show them to him for the purpose of  
2438 refreshing his recollection.

By Mr. Gallagher:

Q. I show you Plaintiff's Exhibit 179 for identification and ask you if that refreshes your recollection as to when you returned to Switzerland in the summer of 1939 (handing a document to the witness). A. Yes; on August 17, 1939.

Q. On August 17. What is it you are refreshing your recollection from?

Mr. Burling: I object to that. In the first place, I object to any further refreshing of his recollection. The witness

testified first that he arrived the 17th, and was then asked to refresh his recollection.

Mr. Gallagher: I will strike it, Mr. Burling, and withdraw the question.

The Court: I think I had better rule that that is not the proper means of refreshing his recollection.

By Mr. Gallagher:

Q. Have you refreshed your recollection from the books of the Uebersee Finanz-Korporation which are in evidence?

A. Yes, certainly I did. I found in the Overseas book the entry of a hotel bill of \$1563, and I knew that that was a hotel bill for quite a considerable time; and, furthermore,

I remember that there was an international auto-2439 mobile race in Bern, and that I arrived in Switzerland three days ahead of this race; and I checked in the newspapers in the Library of Congress that this race took place on August 20, but, to make sure, I asked the hotel to identify copies of bills which were shown in the Overseas books, and that is a copy of the original bill.

Mr. Burling: I move to strike any testimony about what any piece of paper purports to be.

Mr. Gallagher: I have no objection to your motion being granted.

The Court: I sustain the motion.

By Mr. Gallagher:

Q. So it is your testimony, then, that during the latter part of August, a few days before the Normandy sailed for the United States, you did not have any transchannel telephone call with Mr. Houghland from Germany? A. Definitely not.

Q. By the way, in 1935, at the time you endeavored to establish a niessbranch—that is, at the time of the gold litigation—what assets were there in the Uebersee Finanz-

Korporation? A. Overseas owned at this time this gold valued at about 6.4 million Swiss francs, and I held the claim to this amount against Overseas, so if you speak about assets, the net assets were the capital of Overseas.

2440 Q. And what was that capital, approximately? A. At this time I think either 250,000 francs or 500,000 francs.

Q. Excepting the gold, where were the remaining two and a half-odd million dollars which you had acquired from the sale of your Opel shares? A. They were kept by myself either in my name or in the name of Consortium O or Frima.

Q. Until when? A. Until the waiver took place.

Mr. Burling: If Your Honor please, may I ask that there be a clarification as to where the remaining two and a half million dollars were? It has been stated by the witness they were on Consortium O or in his own name. I would like to know where they were.

By Mr. Gallagher:

Q: Would you make a clearer explanation to the Court, Mr. von Opel, as to where those other two and a half million dollars were in 1935 before you put it into Uebersee? Where was it? A. In 1935, in the first part of this year, they were kept by Overseas—pardon me; by Frima, and either at the end of 1935 or in the beginning of 1936 they were sold by Frima to Overseas.

Mr. Gallagher: Is that satisfactory, Mr. Burling?

2441 Mr. Burling: Yes.

By Mr. Gallagher:

Q. Now, just to check a few other places in this record here, at page 1918 of the record, Mr. Crittenden, on direct



examination, was stating that, after a dinner with you in Germany, he asked what your relationship was to Hoffacker and who owned the funds and how you were operating, and the record states:

"Now, to give you a very general description, he told me that he was entrusted with the use of a considerable amount of money by his father under what he described as a usufruct contract and, in a general way, he had the handling of the funds and accounted back to his father; and also at that time related that he had a cousin, whose name I do not recall, who was operating under a similar usufruct contract with funds entrusted to the cousin by Fritz von Opel's uncle."

Did you ever make any such statement to Mr. Crittenden?  
A. No; definitely not.

Q. As a matter of fact, to your knowledge, did you ever have a cousin who had any kind of a contract with a usufruct provision related therein? A. No, I never have.

2442 Q. Now, at page 1938 of the record Mr. Crittenden stated as follows. He was talking about going to Hungary in connection with bauxite, and the question put, at the bottom of 1937, was:

"Did you have any further conversations with him as to this aluminum property in Hungary?"

"Answer: Oh, yes; both him and Dr. Frankenberg. There was a general discussion—going back to Europe, and I was going to take a walking tour with the Doctor, and Fritz was going to drive me to Hungary.

"Question: To Hungary?"

"Answer: Yes.

"Question: For what purpose?"

"Answer: To show these ore mines. He told me they shipped quite a lot of ore to Germany, they did not get money for it and his father did not like it very much."

Now, let us take that in three sections. First, is his statement correct when he states, "He told me they shipped quite a lot of ore to Germany"? A. That is not correct.

Q. How much ore had ever been shipped to Germany at this time Mr. Crittenden is talking about, which is 1937? A.

At this time the only sales which ever had been made 2443 were a thousand tons—approximate a thousand tons—sold to Hungarian Bauxite Trust in, I think it was, 1936.

Q. All right. Now, I might ask you, up until the time that you cabled Transdanubia in May of 1941, suggesting that they accept the Hadik's offer and lease the mines, to your knowledge how much ore had been mined out of the Transdanubia properties? A. In addition to those approximate 1,000 tons I just mentioned which were sold to the Bauxite Trust and paid for in cash on delivery, less than a thousand tons were sold to Giuliani.

Q. So the total production, if I understand you correctly, from the Transdanubia properties up until May of 1941, to the best of your knowledge, was slightly less than 2,000 tons of ore? A. Yes, sir.

Q. How much was that ore worth? What did it sell for in dollars? A. You want dollars?

Q. Yes. A. If you take the highest rate of exchange, which is not correct today, but for argument's sake we can take it, it is about six or seven thousand dollars.

Q. Let us get to the second portion of Mr. Crittenden's answer, "they did not get money for it." Did you get paid for the ore you sold to the Hungarian Bauxite? A. Certainly. There were never any sales made without cash paid prior to delivery.

Q. Let us get to the third part of the answer, and he says, "and his father"—meaning your father—"did not like it very much." Did your father ever indicate his approval or disapproval? A. He did not even know of this affair.

Q. By the way, did you ever receive any money for these 2,000 tons of ore which you stated were mined? Did you

personally ever receive any money out of that? A. No. That all went into Transdanubia.

Q. To your knowledge, did Uebersee ever receive any of that money? A. No, they did not.

Q. Now, you heard Mr. Crittenden testify here and you heard Mr. Bayer testify with respect to the conferences held in Zurich.

Mr. Crittenden made a statement that Dr. Frankenberg stated that he was your father's agent and that your father owned the property.

Mr. Bayer stated he never had such a conversation.

With that in mind, let me ask you this question.

2445 Were you present at all the conferences which were held in Zurich? A. Yes, I think so.

Q. Did you ever hear Dr. Frankenberg, during any of those conferences, make the statement which Mr. Crittenden attributed to Dr. Frankenberg? A. No, never. It is ridiculous.

Q. Did you ever at any time, in the long course of years, in your association with Dr. Frankenberg, ever hear him tell anybody that he was your father's agent? A. No, never.

Q. Now, Mr. Burling asked Dr. Meier on Friday why Dr. Meier, the president of Uebersee, did not supervise the operations of the Transdanubia Corporation. Had you ever given any instructions to Dr. Meier in that regard? A. No.

Q. Or to Dr. Henggeler? A. No.

Q. Or to Dr. Adolph Gaeng? A. No.

Q. Have you ever asked Dr. Meier or Dr. Gaeng or Dr. Henggeler to supervise the operations or management of any of the American corporations or other investments of Uebersee? A. No. They never had anything to do with it.

2446 Q. Now, would you state briefly, inasmuch as you speak in English, and I think it would be a little simpler, just what



were the duties of Dr. Meier as president and Dr. Henggeler and Gaeng as members of the board of Uebersee?

Mr. Burling: I object on the grounds that there is no showing that this witness is a Swiss lawyer or that he is familiar with the corporate charter of Uebersee.

Mr. Gallagher: I am asking him if he could state briefly what he knows of the duties of Meier and Henggeler and Gaeng in respect to Uebersee. I want him to tell, if he knows, to clarify what their job was.

The Court: He can tell what positions they hold.

Mr. Gallagher: As Mr. Burling said, if he is familiar with the corporation charter and all, he could state what their duties are under that, could he not?

Mr. Burling: No. It is a matter of construction.

The Court: Unless the charter defined them.

Mr. Burling: In that case it would be its own best evidence.

The Court: Yes, unless you account for the absence of it—

Mr. Gallagher: It is not too important. I will strike it,

Your Honor.

2447

By Mr. Gallagher:

Q. Now, let us come down to Dr. Frankenberg. Did he have anything to do with the supervision of Transdanubia? A. No, never.

Q. Did he have anything to do with the supervision of the operations of any of the American corporations? A. No, never.

Q. Did he supervise or direct the investment policies of Uebersee? A. No, he did not. In effect, before he even came into the picture, with the exception of about \$230,000, everything was already invested.

Q. You are talking about the year 1932 or 1931, are you? A. Yes, sir, I do.

Q. And that was before Dr. Frankenberg was a member of the board of directors? A. Before he heard about those investments.

Q. Well, if Dr. Frankenberg did not advise you with respect to your investments at the time that you sold the Opel shares to General Motors, who aided you in determining how you were going to invest that three and a half million dollars? A. I did that all alone in the beginning.

Q. Would you explain, step by step, what you did  
2448 when you arrived in the United States and what steps you took looking toward the investment of the funds which you thereafter were receiving from General Motors?

A. After I had terminated the escrow agreement General Motors offered me a block of General Motors shares, 47,625, I remember, at the price of \$24, which was a dollar or a dollar and a half below the stock exchange quotation, and they seemed very eager to sell this block, and as I had to wait for payment about four weeks, I thought it was a kind of an insurance against any devaluation of the mark in the meantime to acquire this General Motors stock.

Q. You say General Motors suggested to you that you purchase the 47,000 shares? A. Yes.

Q. Now, with respect to the remaining money, who gave you any advice, if anybody, in the United States with respect to those investments, with respect to that money? A. I think the first man I talked to about it was Mr. Von Clemm.

Q. Who was Mr. Von Clemm?

Mr. Burling: Would you like me to stipulate that, counsellor?

Mr. Gallagher: No. I will take the witness' answer.  
2449 Mr. Burling: I believe he was prosecuting when you were first assistant in the criminal division.

Mr. Gallagher: I move that that be stricken, because I know nothing about it.

By Mr. Gallagher:

Q. Will you state who Mr. Von Clemm was? A. Mr. Von Clemm at the time was the so-called customer's man of a firm by the name of Burden-Cole, and I had met Mr. Von Clemm through a schoolmate of mine who had invited both of us to lunch.

Q. This was in October, 1931? A. In October, 1931, yes.

Q. You say Mr. Von Clemm was customer man of Burden-Cole? A. Customer man of Burden-Cole. In fact, he was the one from whom I bought the first Spur stock.

Q. Did you meet anyone else who aided you in investments through Mr. Von Clemm? A. I asked Mr. Von Clemm whether he knew any man versed in investments, and I specifically asked him for somebody speaking German, because at the time I could not speak much English, and he recommended me Mr. Hoffacker.

Q. Did you meet Mr. Hoffacker? A. I met Mr. Hoffacker in October, the second half of October, 1931.

2450 Q. Did you employ him as your investment counsellor? A. Yes. I made an agreement with him that he should trade the General Motors stock. I thought when General Motors was so eager to sell me this stock that the market might fall, so I thought I had better watch that stock and have it sold.

Q. Did he work with you thereafter for several years? A. Yes, that's what he did.

Q. At that time had your father given you any advice as to whom you were to employ as investment counsellor? A. No.

Q. Did he give you any directions as to how you were to invest the proceeds from the sale of the Opel shares if you determined to sell them? A. No. In a general way, he told me, "That is quite a big property you have. Don't try to enlarge it. It is big enough. The only thing you should do is to keep it together, and when you succeed doing so in these troubled times, you have done a lot."



Q. And he did not give you any suggestions as to whom you should talk to when you arrived in New York  
2451 to aid you in investment policies? A. No; no. I think I did most of my investing through a firm by the name of Hallgarten and Company, in Pine Street, New York.

Q. Mr. von Opel, when you began to act for Uebersee thereafter, who gave you the power of attorney? Dr. Meier or Dr. Frankenberg or Dr. Haggeler? A. No; they were not in the picture yet.

Q. You mean Dr. Frankenberg was not even in the picture yet? A. No. I had not even acquired Overseas yet.

Q. I see. A. The first power of attorney I got from Overseas was signed by Dr. Martin Bloch, who was at the time, if I remember, president of Overseas.

Q. Now, you stated that Dr. Frankenberg came into the picture after you had invested practically all the proceeds which you had received from the sale of the Opel stock, with the exception of about \$200,000. When was the first time that you did have any conversation with Dr. Frankenberg about the investments that you had made? A. I think that was after I had acquired the Spur stock, and I got somewhat worried—

Q. Could you fix that time, approximately? A. That must have been in the summer, 1932. I either had already acquired it or was in the way of acquiring it. I  
2452 acquired it through Mr. Cole, of Burden and Cole.

Q. You say you had a conversation with Dr. Frankenberg about Spur? A. Yes. I told him that it seemed rather risky to have a gasoline retailer without its own gasoline supply and said they had always to fight off the big units like Shell and Standard, and they might cut off their supply; and I said I was interested in investing some of my money in crude oil in the ground, which was at the time selling at between six or eight cents. Even Dr. Frankenberg, who was not well versed in the oil business, thought that I could not make a mistake buying oil so cheaply.

Q. When was the next time, to the best of your recollection, that you had any conversations with Dr. Frankenberg with regard to your investments? A. I think the next time was in 1933, when the American banks got into trouble. I had certain applications at the time, and I was afraid that my funds in American banks might be frozen. So I talked to him, what could be done about it, and he suggested I should either convert those dollars into Swiss francs or should acquire gold.

Q. I see; and did you acquire the gold? A. I 2453 wired over to the National City Bank, which were holding securities of mine, and I asked them to acquire this gold; but, unfortunately, I did not follow Dr. Frankenberg's second advice and did not ship it immediately to Switzerland. I could have done such for at least a period of ten days.

Q. You have said previously that neither Dr. Frankenberg nor any other member of the board of administration of Uebersee took any part in the administration of the American corporations in which you, through Uebersee, had stock interest; is that correct? A. That is correct, with one qualification. I think I should point out that Dr. Frankenberg had a dual capacity, and so the turning point was 1935, in the summer, when I became heavily indebted, and at this time Dr. Frankenberg became, or, rather, the Adler Bank became a creditor of Overseas to the tune of three or sometimes even four hundred thousand dollars.

The Court: Suppose we take a five-minute recess.

(A short recess was had.)

2454 By Mr. Gallagher:

Q. We were at the point, I believe, when we took the recess, Mr. von Opel, when you stated that Dr. Frankenberg became important to you in this picture in and

around 1935, 1936, and 1937, when you needed money, because you were not in a liquid position; is that correct?

A. Yes. At this time I could not export the gold from the United States, and I had to meet certain obligations, and I became rather illiquid.

Q. Did you negotiate loans through him and with the Adler Bank? A. Yes, I did such, and he loaned me at this time about \$350,000.

Q. Did you pledge some of your securities with him? A. Yes, most of them.

Q. Did you pledge Uebersee shares? A. At the time, yes; later on I pledged some American stock.

Q. So in the years between 1935 and 1940, and thereabouts, if I understand you correctly, you were quite dependent on Dr. Frankenberg and his banks; is that correct? A. I should say between the years—about, somewhere, 1935 up to 1940 or 1941. Just before the war I sold some property and got into a liquid position again.

Q. But Dr. Frankenberg was not in the picture 2455 at the time you made investments in America with the proceeds from the sale of the Opel shares; is that correct? A. No.

Q. By that you mean he was not in the picture? A. He was not in the picture, no. He was—I think he became board member, together with Dr. Henggeler and Dr. Meier, in the beginning of 1932. But at the time, none of them knew anything about my investment.

Q. Just to come back to Mr. Crittenden again, in discussing Theodore Hoffacker, Mr. Crittenden made the statement that Theodore Hoffacker was an agent for Fritz von Opel and that Fritz von Opel did not breathe, move, or talk without his permission or advice. Is that a true statement or a correct statement? A. It is partly correct; I would say so much that Mr. Hoffacker had a very domineering position toward everybody, and he was the kind of man who thought he had all the answers, and



it was really very difficult to get along with him. I tried hard to. I hired him, and after I couldn't improve his manners, I fired him.

Q. Now, Mr. von Opel, you heard Miss Schoch testify that your father could not have become a devisen auslander and have taken his property out of Germany. Is that correct? A. I think that what Miss Schoch meant, if I understood her correctly—I think she later stated—

2456 Mr. Burling: Just a minute. I object, if Your Honor please, on the ground that it is not proper to rebut the testimony of an expert legal witness with a layman.

The Court: That is correct, isn't it, Mr. Gallagher?

Mr. Gallagher: Probably so. We will strike it and leave it for Dr. Kronstein.

By Mr. Gallagher:

Q. Let me put an assumption to you, if I may, and I hope in somewhat the method of Mr. Burling.

Let us assume that your father did not want to leave Germany, and let us further assume that he did not want to give any of his property to you—that is, the Opel shares; that he wanted to keep everything for himself, particularly all the rights under the escrow agreement with General Motors. Was there a way for him to do this practically without breaking any foreign-currency regulation?

Mr. Burling: The same objection.

The Court: The same ruling.

Mr. Gallagher: All right. That is all.

### *Cross Examination*

By Mr. Burling:

Q. I believe on redirect, Mr. von Opel, you testified that you heard Mr. Crittenden testify that you had said to

him in Essen, in the summer of 1937, that you were operating under an escrow agreement with your father, 2457 that you had the management of your father's funds, and that you had a cousin who had similar relationship to an uncle of yours; is that right? A. Pardon me. You speak about an escrow agreement. What do you mean by that?

Q. I am sorry; a usufruct agreement. Pardon me. A. That is what I stated.

Q. I am just trying to refresh your recollection—just trying to place your recollection—now.

You heard Crittenden say that you told him at this dinner in Essen that you were managing your father's funds under a usufruct agreement and that you had a cousin who was managing funds of an uncle of yours under a similar arrangement; is that not what you heard him say? A. Yes, that is what he testified. Yes.

Q. You told Mr. Gallagher just now, did you not, that you had no cousin who had any such relationship with any such uncle; is that correct?

Mr. Gallagher: I think the record will reflect, Mr. Burling, that he testified in response to my question that he had no cousin who had a contract with his uncle which contained a usufruct provision or a provision similar to a usufruct.

Mr. Burling: All right.

By Mr. Burling:

2458 Q. But you did have a cousin to whom your uncle transferred 600 shares of Opel stock; is that not true?

Mr. Gallagher: Now, Your Honor, at this point, if Mr. Burling is going to go into the question of the relation-

ship of the uncle with the cousin, then I submit that this opens up the criminal decrees, and we are back into that situation.

Mr. Burling: If Your Honor please—

The Court: Whether it opens it up or not, I don't know. I will hear you on the question of the admissibility of it.

Mr. Burling: Mr. Gallagher sought to—

The Court: Let me hear from him, first, on his objection.

Mr. Gallagher: All that I asked Mr. von Opel about was a question which negated directly the answer given by Mr. Crittenden, and it was confined to the question of whether or not a contract containing a usufruct provision was being exercised and under which his cousin was operating. I submit that any further cross-examination by Mr. Burling is limited to a contract of that nature.

The Court: What he was trying to rebut, as I understand it, was the statement of Mr. Crittenden as to what Mr. von Opel told him—what this witness told him; isn't that right?

Mr. Gallagher: This witness was rebutting the fact that he did not state that to Mr. Crittenden.

The Court: But in rebutting it, then he said his 2459 cousin never did have any such transaction.

Mr. Gallagher: No; he said his cousin did not—he had no cousin, to his knowledge, who operated under a contract containing a usufruct provision, or provision similar to a usufruct, with his uncle. Now, any other contract which may have been negotiated with his uncle, and the validity of that, or otherwise, I suggest or submit is not relevant.

Mr. Burling: I submit, if Your Honor please, that it is directly relevant to show that Crittenden, who was a widely known American lawyer, let alone German lawyer, correctly understood what Fritz von Opel said.

I wish to show that Fritz von Opel had an uncle who also had 600 shares of Opel stock, just as his father did;



and that that uncle purported to sell those shares to a cousin of Fritz von Opel, which cousin also is in Switzerland, and got the money out of Germany in exactly the same relationship.

I offer that not to show that the uncle was guilty of fraud or that there was some tendency in the Opel family generally to commit frauds, but merely to show that what Crittenden was told at the dinner in Essen is substantially what he said here, except that he made a highly technical error of German law in saying it was a usufruct contract instead of a sale contract.

Mr. Gallagher: And, I might say, a highly technical error of fact, in that he is saying in 1937 that the cousin  
2460 is holding under a usufruct, whereas in the contract that Mr. Burling is talking—

The Court: I think the testimony Crittenden gave was as to conversations this witness had with him. If you deny the conversations and stop right there, then, of course, the record will be one way. But, as I understand it, you went a little further and said to his actual knowledge no such transaction—or in effect no such transaction—as that had occurred.

Now, then, he wants to show that one like that was—I mean as to what he told him and what Mr. Crittenden understood really is important—

Mr. Gallagher: Then, I would like to ask if we may conclude from that that we could submit the decree which found the uncle guilty and that he had to bring back the money?

Mr. Burling: I will stipulate that the uncle was found guilty of the fraudulent transfer and did bring the money back.

The Court: We cannot get too far away from the issue. If we get off on too many collateral issues, we will have this case reversed no matter which way I decide it.

If you want to stand on the fact that they did not have any transaction, and let it stay in, then I think probably the fact that they had some such transaction is admissible, because you are asking me to draw the inference that Mr. von Opel never made any such statement as that, 2461 because no such transaction ever occurred that he knew about. Counsel is now asking if there was not a transaction at least of that purport that happened.

Mr. Gallagher: And that the cousin was operating under it in 1937?

Mr. Burling: No; I am asking, Wasn't it a highly similar contract? It would not rebut Crittenden if he made some error as to provisions of usufruct.

Mr. Gallagher: Go ahead. Let him answer.

The Court: That is the length to which I am going to permit you to go: that it was a somewhat similar transaction.

Mr. Burling: I do not want all the details of it, because I do not want to get too far afield. I think I understand Your Honor's ruling, and will be guided accordingly.

Will you read the question now, Mr. Reporter, please?

The Reporter (Reading):

"Question. You told Mr. Gallagher just now, did you not, that you had no cousin who had any such relationship with any such uncle; is that correct?"

By Mr. Burling:

Q. Is that your testimony? A. That is correct, yes.

Q. On October 5, 1931, you had an uncle, Dr. Fritz Opel, who owned 600 shares of Adam Opel A. G., did you not? A.

Yes, that is correct.

2462 Q. You had a cousin, Hans von Opel, residing in Switzerland at that time; is that not true? A.

That is correct, yes.

Q. Is it not a fact that in October, 1931, Dr. Fritz Opel purported to sell to Hans Opel the 600 shares? A. No: that is not the way I remember it.

Q. At some time or other after October 5, 1931, there was a transfer—there was a purported transfer—of the shares from Dr. Fritz Opel, a devisen inlander, to Hans Opel, your cousin, a devisen auslander; isn't that so? A. Are you asking me what I know about it, or what I have read in the secret Nazi report you gave us?

By the Court:

Q. What you knew about it before you talked to Mr. Crittenden. A. I knew the following: I arrived in New York by the middle of October, 1931, and I received a wire from my uncle whether I would represent him, and I wired him back I would not; and I heard from General Motors—John Thomas Smith—that they had a block of 200,000 General Motors shares for sale and that my uncle already had sold his 600 Opel shares against the block of 152,000-odd numbers of General Motors shares.

By Mr. Burling:

Q. So as not to go too far—

2463 Mr. Gallagher: Just a moment. I want him to finish explaining what he knew before 1935.

Mr. Burling: I am trying to comply with His Honor's request and not go too far in detail.

Mr. Gallagher: You asked him as to his explanation of what he knew. I submit the witness should have an opportunity to finish explaining what he knew. It will take only another minute.

The Court: I think probably so.

The Witness: That makes for this odd number of shares, this 47,625, they wanted to sell me. That was the remainder of 200,000 they wanted to sell at all.



By the Court:

Q. The principal thing we want to know, is, What was the nature of the relationship of your uncle to the shares after he transferred them to your cousin? A. I heard about this matter about two years later in connection with the criminal proceedings.

Q. Was that before you had this talk with Mr. Crittenden? A. Oh, yes; it was many years before this time I had this talk with Crittenden.

Q. What information did you have with regard to what interest your uncle retained, if any, after he transferred it to your cousin? What was that information? A. I knew at the time I met Mr. Crittenden in Essen that this 2464 whole contract was a sales contract between my uncle and my cousin and that that was immediately revoked after the authorities found out about it. That is all I knew about it.

Q. Well, but as of the time of the conveyance, did you have any information as to whether your uncle retained any title to it? As of the time of the conveyance by your uncle to his son, did you have any information? A. It was no conveyance to his son, Your Honor. It was a purported sales contract from my uncle to my cousin, but that was immediately revoked.

Q. Wasn't that his son? A. No; his cousin.

Q. His nephew? A. Pardon me. I said my cousin. It was his nephew.

Q. That is what I mean. As of the time before you talked to Crittenden, we are trying to find out—at least, I think that is what he is trying to find out—as of the time you talked to Crittenden, what was your understanding that your uncle had done with regard to retaining any interest in that stock as of the time that he is reported to have sold it to his nephew? A. I knew in 1937, of course, that my uncle was forced to return everything into Germany—back into Germany.

Mr. Burling: Into his hands, if Your Honor please.

The Witness: Into his hands, yes; that is correct.

2465 Mr. Ingoldsby: May the witness be permitted one minute to explain what the transaction was? I submit that taken out of its setting, the way it is left, I think, does not present the correct picture.

The Court: I don't mind his telling what he knows. I think that is what we are trying to find out.

Mr. Ingoldsby: The conversation about which we are talking occurred in the summer of 1937 in Essen. Now, all the proceedings involved in this other transaction with the uncle dated from 1931 through 1934, so—

The Court: I understand all that. Here is the point: Mr. Crittenden testified to a conversation which he denies.

Mr. Ingoldsby: That is right.

The Court: Then, Mr. Gallagher asks him, in effect, if any such conversation occurred. Mr. Burling tried to show that one substantially along this line did occur.

Mr. Ingoldsby: I get the point.

The Court: I am trying to find out what he knew about it.

The Witness: When this gift agreement was made October 5, I asked my father to keep it secret and under no circumstances to tell my uncle anything about it, because he knew that he was not dependable and would try to do something of his own in a foolish way, and therefore I was very much embarrassed when I arrived in New York and when I heard that on October 6 General Motors had received a cable where my uncle had sold his 600 Opel  
2466 shares.

I knew then, at this time, that my father apparently had told my uncle; and when I came back in Germany, of course, I told my father that it was a big mistake he made, and he said it was his own brother, and he couldn't—he felt he should tell that to him.

Then, the next thing I heard was in the spring or summer of 1932, when I was in New York. I heard in Wall

Street that somebody was buying German bonds—special Karstardt bonds—and I knew that my uncle was interested in Karstardt, and so I immediately thought that he was the one who was going to repatriate those shares into Germany, and I knew that that was not permissible under the German law.

The Court: I think we are getting right many details in. I guess we have enough on it from his point of view, probably. If you want to bring anything out on redirect, you may.

Mr. Burling: My point is satisfied, Your Honor.

By Mr. Burling:

Q. Coming to a different topic, Mr. von Opel, you say that up to the time you left Europe about 2000 tons of bauxite was the total production of the Hungarian mines?

A. Yes, approximately.

Q. Yet it is the fact, is it not, that you negotiated a contract on behalf of Transdanubia with Giulini Brothers in the fall of 1939 to supply Giulini with a hundred 2467 thousand metric tons of bauxite? A. Yes, that is correct. It was done to offset this stealing of bauxite by Koranyi.

Q. But, at any rate, you did cause Transdanubia to contract to deliver a hundred thousand metric tons? A. Yes. As I told you, there was a loophole in this contract.

Q. Your father knew nothing about the bauxite business; is that your testimony? A. No.

Q. He was several times in Budapest before you left Europe, was he not? A. Yes; he always went hunting in Hungary.

Q. You never told him you had bauxite interests in Hungary? A. It is possible that I mentioned it to him in a general way.